

Regulatory monitoring

Newsletter

July 2022





ECB in focus

ECB in focus is our blog dedicated to the banking supervisory activities of the European Central Bank (ECB). We report on key developments in European banking regulation led by the ECB as part of the Single Supervisory Mechanism (SSM).

The blog features views and commentary from members of Allen & Overy's market-leading German financial services regulation practice.

For enquiries regarding Allen & Overy's ECB in focus blog, please contact us.

Some of our recent posts

ECB EXPRESSES SUPPORT FOR THE EU PROPOSAL TO HARMONISE RULES FOR THIRD COUNTRY BANK BRANCHES UNDER CRD VI

7 June 2022

In its opinion on the Commission's proposal to amend CRD VI, the ECB strongly supports the plans envisaged by harmonising the EU regulatory framework for third country branches. It endorses the planned prohibition to provide cross-border banking services, but acknowledges that the scope of the services caught by the ban needs clarification.

[Read more →](#)

EU GENERAL COURT BACKS ECB ON REFUSAL TO PERMIT SILVIO BERLUSCONI TO ACQUIRE A STAKE

5 July 2022

In *Fininvest and Berlusconi* (Case T-913/16), the General Court upheld the ECB's decision to refuse to authorise Silvio Berlusconi's acquisition of a qualifying stake in Banca Mediolanum, due to his failure to meet the reputational criterion following his 2013 conviction for tax fraud.

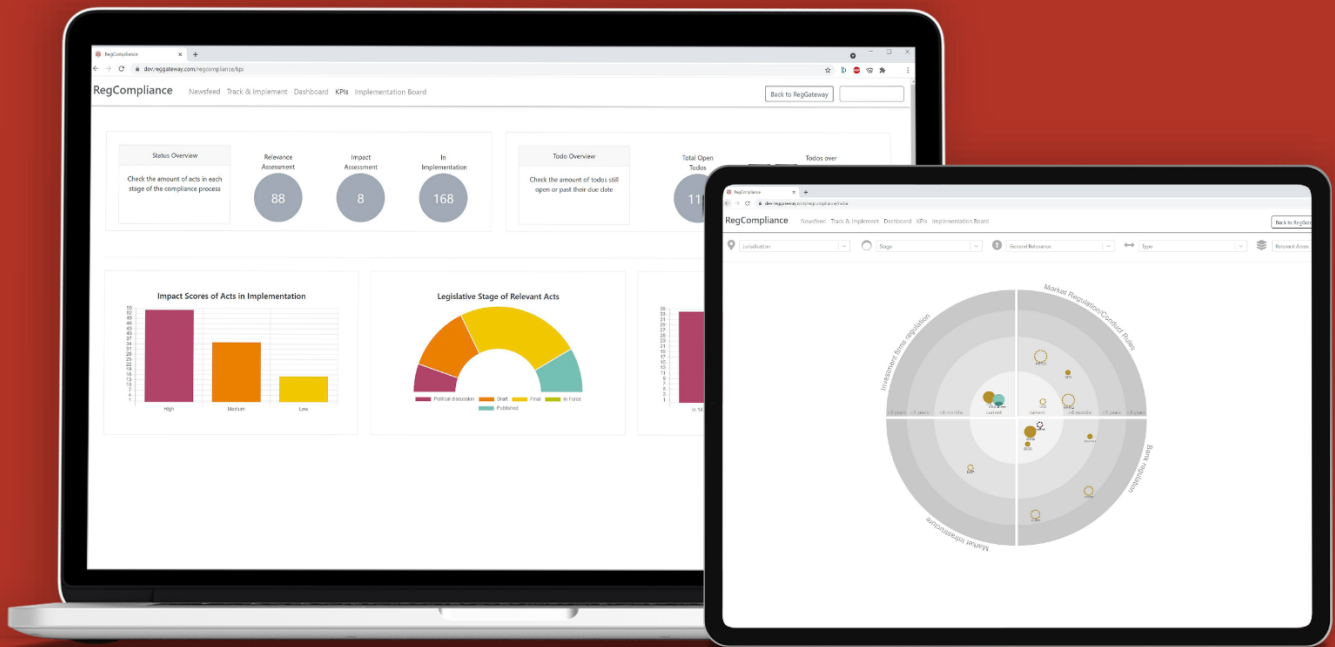
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GOVERNANCE WITHIN SMALLER BANKS - KEY TAKEAWAYS FROM THE ECB THEMATIC REVIEW

1 June 2022

In the context of its 2022-2024 Supervisory Priorities, the ECB carried out a thematic review of the governance arrangements of more than 200 smaller banks under its indirect supervision. The review identified some areas requiring improvement and highlighted the need for greater alignment among European supervisors in addressing the identified weaknesses.

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CHANGE ANALYSIS AND PREVIEW OF RULES

Read the future versions of a law early, including the official explanatory memorandum, and identify any legislative changes.

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) EU

EP: Update on progress of 'Daisy Chain' proposal

Status: Draft

The EP updated its procedure file on the proposed Regulation as regards the prudential treatment of global systemically important institution groups with a multiple points of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL), or 'Daisy Chain' proposal, to indicate that a vote in plenary has been scheduled on 13 September.

Date of publication: 13/07/2022

(ii) International

BCBS: High-level considerations on proportionality

Status: Final

The BCBS has published a report containing high-level considerations on proportionality. The Basel Framework which sets minimum requirements for internationally active banks also allows for a degree of proportionality by providing options to implement simpler standardised approaches. The BCBS acknowledges that, while the simpler standardised approaches in the Basel Framework may also be suitable for banks that are not internationally active, in some cases regulation might require even further adaptation. The aim of these high-level considerations is to provide practical support to authorities seeking to implement proportionality in these situations in their domestic frameworks, in a way that does not undermine financial stability or the safety of financial institutions.

The high-level considerations include: (i) depending on local circumstances, it might be appropriate to tailor regulation for non-internationally active banks. This includes potentially applying the Basel Framework in its current form, or earlier or modified forms, for jurisdictions that have simpler banking systems, implemented in a way that is consistent with the underlying objective of the international standard; (ii) effective proportionate approaches strive to be both conservative and simple to understand and implement. The objective of proportionality is to reflect jurisdictions' circumstances and supervisory capacity, not to dilute the robustness of the standards; (iii) proportionality approaches that include supervisory discretion allow supervisors to respond to bank behaviours and financial system developments.

The BCBS encourages supervisors to ensure that proportionality approaches do not create opportunities for regulatory arbitrage or particular (dis)incentives for any group of banks. In general, simple segmentation rules work well for most, but not necessarily all, banks. In addition, financial systems may evolve in ways that are not foreseen when a proportionality approach is first designed. The considerations are voluntary and do not modify any of the BCBS's existing standards, Guidelines or sound practices.

Date of publication: 07/07/2022

(b) Solvency/Own funds issues

(i) EU

EBA: Consultation on the supervisory handbook on the validation of rating systems under the IRB approach

Status: Consultation

Deadline for the submission of comments: 28/10/2022

The EBA has launched a consultation on the supervisory handbook on the validation of rating systems under the IRB approach. The handbook: (i) clarifies the role of the validation function as part of corporate governance, in particular, in terms of scope of work and interaction with the credit risk control unit. It provides some general guidance on the expectations relative to the validation function, as already laid out in Article 185 of the CRR, it builds on the EBA RTS and Guidelines which are part of the 'IRB repair roadmap' and provides a detailed description of the areas which the validation function is expected to assess; (ii) does not present any specific methodology to be used by the validation function, but specifies which elements of institutions' rating systems are expected to be assessed by the validation function. As such, it covers both the tasks related to the pure model performance assessment, mirroring the CRR distinction between risk differentiation and risk quantification, as well as the tasks dealing with the modelling environment, such as data quality and model implementation assessment; (iii) clarifies the validation function tasks' relationship with other functions related to the corporate governance, such as the credit risk control unit and the internal audit; and (iv) provides a set of expectations and good practices on the work of the validation function depending on its position in the model cycle, as well as some additional guidance for the validation of rating systems when using external data, when outsourcing some validation tasks, as well as in a situation of data scarcity.

Date of publication: 28/07/2022

EBA: Opinion on legacy instruments: outcome of its implementation

Status: Final

The EBA has published a report analysing how its opinion on the prudential treatment of legacy instruments, in the context of the end of the grandfathering period in December 2021, has been implemented across the EU. The October 2020 opinion identified two main issues which could create infection risk (the risk of other layers of own funds or eligible liabilities instruments being disqualified). The EBA complemented its opinion with additional guidance and interpretation, and clarified that there are several tests that the instruments need to pass in addition to the test of the infection risk. Since the issuance of the opinion, the EBA has been working in close cooperation with competent authorities to monitor any action taken by institutions to mitigate the infection risk related to such legacy instruments.

Overall, the EBA found that both institutions and competent authorities have made significant efforts to implement the opinion in an effective and consistent manner. Legacy instruments have been addressed mostly through the use of calls, redemptions, repurchases, buy-backs or amendments to the terms and conditions. In addition, the EBA found that in a few jurisdictions, the transposition of Article 48(7) of the BRRD helped mitigate the infection risk, by ensuring all claims resulting from own funds items have, in national laws governing normal insolvency proceedings, a lower priority ranking than any claim that does not result from an own funds item. However, for a limited residual number of instruments, actions are still ongoing or under consideration, with call options planned to be exercised in the course of 2022 or later. A few instruments will be kept in a lower category of own funds or as eligible liabilities or in the balance sheet as non-regulatory capital. Further actions could be undertaken or announced in the near future. A new generation of legacy instruments has been created by the new grandfathering period running until June 2025 and resulting from the provisions introduced by the CRR II. Against this background, the EBA will re-assess when the time comes the need for additional scrutiny on these actions and on the remaining stock legacy instruments.

Date of publication: 07/07/2022

(c) Securitisation

(i) EU

EBA: Consultation on draft RTS on the homogeneity of the underlying exposures in STS securitisation under Articles 20(14), 24(21) and 26b(13) of the Securitisation Regulation, as amended by Regulation (EU) 2021/557

Status: Consultation

Deadline for the submission of comments: 28/10/2022

The EBA has launched a consultation on draft RTS specifying the criteria for the underlying exposures in securitisation to be deemed homogeneous. Such specification is part of the requirements under the Securitisation Regulation, and as amended by the Capital Markets Recovery Package. The homogeneity requirement aims to facilitate the assessment of underlying risks in a pool of underlying exposures and to enable investors to perform robust due diligence. The draft RTS: (i) will amend Commission Delegated Regulation (EU) 2019/1851 (existing RTS) and will be applicable to all securitisations, including asset-backed commercial paper (ABCP), non-ABCP, and on-balance-sheet securitisations; (ii) carry over the provisions on homogeneity set out in the existing RTS with some modifications. While extending the scope to on-balance-sheet securitisations, they establish the same criteria for the assessment of homogeneity for all securitisations; (iii) make adjustments to one of the homogeneity factors, the type of obligor, to reflect the current market practices and the credit risk assessment approaches applied to corporate and SME loans in the context of synthetic securitisations. To ensure consistency, similar changes are made to the respective homogeneity factor for all relevant asset types; and (iv) specify further the asset type for credit facilities provided to enterprises, where similar underwriting standards are applied as for individuals.

Following the consultation, the draft RTS will be submitted to the EC for endorsement, following which they will be subject to scrutiny by the EP and the Council before being published in the OJ.

Date of publication: 28/07/2022

Commission Delegated Regulation (EU) 2022/1301 amending the RTS laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations

Status: Published in the OJ

Date of entry into force: 15/08/2022

The Commission Delegated Regulation (EU) 2022/1301 amending the RTS laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the simple, transparent and standardised (STS) notification requirements for on-balance-sheet synthetic securitisations has been published in the OJ. The amendments relate to the extension of the STS securitisation framework to on-balance sheet synthetic securitisations by the Covid-19 Securitisation Regulation Amending Regulation ((EU) 2021/557). The amendments aim to ensure consistency across all STS notifications where possible and: (i) specify the information originators must submit to ESMA; (ii) distinguish between those STS criteria for which a simple confirmation is sufficient, and those for which greater explanation is required; and (iii) restrict the information to be published in STS notifications for securitisations where no prospectus is required to non-sensitive commercial information.

Date of publication: 26/07/2022

(d) Liquidity

(i) International

BCBS: Assessment of EU large exposures framework and net stable funding ratio standard

Status: Final

The BCBS has published Regulatory Consistency Assessment Programme (RCAP) reports on the EU's implementation of the Net Stable Funding Ratio (NSFR) and large exposures (LEX) framework under the Basel framework. Overall, as of the end of March 2022, the NSFR and LEX regulations in the EU were assessed as largely compliant with the Basel standards. This is one

notch below the highest overall grade. Three of the four components of the Basel NSFR standard (scope, minimum requirements and application issues; available stable funding; and disclosure requirements) are assessed as compliant. The remaining component, required stable funding (RSF), is assessed as largely compliant. The BCBS noted that the RSF factors for certain types of transaction would be adjusted in aligning the EU regulations with the Basel NSFR standard by June 2025, which should be subject to review in a future RCAP assessment. The three components of the Basel LEX standard (scope and definitions; minimum requirements and transitional arrangements; and value of exposures) are assessed as compliant, largely compliant and compliant, respectively. The BCBS discovered a potentially material finding related to the limit applicable to trading book exposures, as the EU regulations allow for the LEX limit to be exceeded up to 600% of a bank's Tier 1 capital. The BCBS noted that the EC has proposed an amendment to the current provisions on the possibility of using own volatility estimates via the deletion of the corresponding provisions in the CRR, which should be subject to review in a future RCAP assessment.

- [Regulatory Consistency Assessment Programme \(RCAP\) – Assessment of Basel NSFR regulations – European Union](#)
- [Regulatory Consistency Assessment Programme \(RCAP\) – Assessment of Basel large exposures regulations – European Union](#)

Date of publication: 14/07/2022

(e) Remuneration

(i) EU

[EBA: Report on benchmarking of remuneration practices at the European Union level and data on high earners](#)

Status: Final

The EBA has published a report on benchmarking remuneration practices in EU banks for the financial years 2019 and 2020, as well as high earners data for 2020. The EBA has analysed the data provided for the financial year 2020 and compared them with the 2019 and, with regard to high earners, also 2018 data. The main results are: (i) the total aggregated figures in the EU for 2019 compared to 2020 show a material decrease from 4,963 to 1,383 high earners who were awarded €1 million or more remuneration, due to the fact that 2020 figures no longer include data for high earners in the UK, who accounted for 71% of all high earners in 2019. Additionally, the weighted average ratio of variable to fixed remuneration for all high earners fell from 129% in 2019 to 86.4% in 2020; (ii) for the EU27/EEA, there was a slight decrease in the number of high earners, from 1,444 in 2019 to 1,383 in 2020 (-4.2%). The decrease is mainly caused by the reduction of the variable remuneration for certain staff in the context of the Covid-19 pandemic, also in line with the EBA recommendation to set variable remuneration of identified staff at a conservative level. An increase of the weighted average ratio from 85.9% in 2019 to 86.4% in 2020 was observed, which was mainly caused by large severance payments; and (iii) the regulatory framework for remuneration practices still appeared insufficiently harmonised; in particular, the application of deferral and pay-out in instruments differs significantly among Member States (EU and EEA) and institutions, mainly in relation to differences in the national implementation of CRD. The implementation of CRD V on 28 December 2020, which introduced specific criteria for derogations to the requirement to pay out a part of the variable remuneration in instruments and under deferral arrangements, is expected to increase the level of harmonisation.

Date of publication: 21/07/2022

(f) Large exposures/Limits to shadow banking entities

(i) EU

[EBA: Report on the use of exemptions from the limits to large exposures, under Article 507\(1\) of the CRR amended by CRR II](#)

Status: Final

The EBA has published a report on the use of exemptions from the limits to large exposures, under Article 507(1) of the CRR amended by CRR II. The report analyses banks' use of the various exemptions from different perspectives and quantifies the

impact of a potential removal of individual exemptions. Overall, the report shows that some of the assessed exemptions are widely used across the EU and their removal would have a material impact while other exemptions are widely used across the EU but their removal would not have material impact. In addition, some exemptions are relevant only for some countries or appear to be rarely used. The report provides detailed quantitative evidence about the use of the exemptions, as of June 2021, but does not contain any policy recommendations. The EBA has started a specific data-collection exercise regarding the use of some of the large exposures exemptions/exclusions provided in the CRR as amended by the CRR II.

Date of publication: 22/07/2022

(ii) International

BCBS: Assessment of EU large exposures framework and net stable funding ratio standard

Status: Final

The BCBS has published Regulatory Consistency Assessment Programme (RCAP) reports on the EU's implementation of the Net Stable Funding Ratio (NSFR) and large exposures (LEX) framework under the Basel framework. For more information, please see section 1.1(d) above.

- [Regulatory Consistency Assessment Programme \(RCAP\) – Assessment of Basel NSFR regulations – European Union](#)
- [Regulatory Consistency Assessment Programme \(RCAP\) – Assessment of Basel large exposures regulations – European Union](#)

Date of publication: 14/07/2022

(g) Deposit protection

(i) EU

EBA: Consultation on draft revised Guidelines on methods for calculating contributions to deposit guarantee schemes under the DGS Directive repealing and replacing Guidelines EBA/GL/2015/10

Status: Consultation

Deadline for the submission of comments: 31/10/2022

The EBA has launched a consultation on draft revised Guidelines on methods for calculating contributions to deposit guarantee schemes (DGSs) under the DGS Directive. These Guidelines aim to replace the original Guidelines EBA/GL/2015/10 with a streamlined and simplified version, including enhanced proportionality between the risk of a credit institution and its contributions to the DGS. In particular, the revised Guidelines aim to (i) set minimum thresholds for the majority of core risk indicators and adjust their minimum weights to better reflect the indicators' performance in measuring the risk to the DGSs; (ii) introduce an improved formula for determining the risk adjustment factor of each member institution that ensures a constant relationship between the riskiness of institutions and their DGS contributions; and (iii) specify how to account for deposits where the DGS coverage is subject to uncertainty, including in relation to client funds, thus ensuring closer alignment between the amount of covered deposits of a credit institution and its contributions.

Date of publication: 29/07/2022

(h) Accounting/Prudential filter/Audit

(i) EU

Publication of two Implementing Decisions regarding the equivalence and adequacy of the competent authorities of the United States of America pursuant to the Audit Directive

Status: Published in the OJ

Date of application: 01/08/2022

The following two Implementing Decisions have been published in the OJ: (i) Commission Implementing Decision (EU) 2022/1298 on the equivalence of the systems of public oversight, quality assurance, investigation and penalties for auditors and audit entities of the competent authorities of the United States of America pursuant to the Audit Directive (2006/43/EC); and (ii) Commission Implementing Decision (EU) 2022/1297 of 22 July 2022 on the adequacy of the competent authorities of the United States of America pursuant to the Audit Directive.

- Commission Implementing Decision (EU) 2022/1298 on the equivalence of the systems of public oversight, quality assurance, investigation and penalties for auditors and audit entities of the competent authorities of the United States of America pursuant to the Audit Directive
- Commission Implementing Decision (EU) 2022/1297 of 22 July 2022 on the adequacy of the competent authorities of the United States of America pursuant to the Audit Directive

Date of publication: 25/07/2022

1.2 Recovery and resolution

(i) Germany

BaFin: Extended Guidance Notice on external bail-in execution (*Erweitertes Merkblatt zur externen Bail-in-Implementierung*)

Status: Final

BaFin has published an expanded Guidance Notice on external bail-in implementation, previously published on 13 April 2021. The document contains specifications on the activities to be carried out by the actors involved, the information to be exchanged, communication channels, timelines and format templates to support an effective and efficient implementation regarding the resolution tools of participation of holders with relevant capital instruments and creditor participation pursuant to Sections 89 and 90 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz – SAG*) (Articles 21 and 27 SRM Regulation).

The main expansion relates to the external bail-in implementation by two international central securities depositories (ICSDs) – Euroclear Bank and Clearstream Banking Luxembourg – or a so-called “ICSD Add-On”. Furthermore, additional exchanges have been included, so that the new version aims to cover the suspension of trading on all relevant exchanges in Germany. In addition, the focus of the instruments issued by the institution in settlement in Germany has been broadened to include percentage-listed structured debt instruments.

The Guidance Notice is aimed at all institutions within the meaning of Section 2(1) SAG and companies within the meaning of Section 1(3) SAG in Germany for which the resolution strategy provides a bail-in. This also includes institutions within the remit of the Single Resolution Board (SRB) as the resolution authority.

Date of publication: 11/07/2022

(ii) EU

ESRB: EU Non-bank Financial Intermediation Risk Monitor 2022

Status: Final

The ESRB has published its EU Non-bank Financial Intermediation Risk Monitor 2022 (NBFI Monitor) as the seventh issue in an annual series monitoring non-bank financial intermediation, including investment funds and other financial institutions (OFIs) such as financial vehicle corporations, security and derivative dealers and financial corporations engaged in lending. The entity-based analysis is complemented by an activity-based assessment looking at risks and vulnerabilities in securities financing transactions, derivatives and securitisations which are used across entities and where risks can arise from the use and reuse of financial collateral. This year's edition of the NBFI Monitor highlights the following risks: (i) disorderly market corrections, possibly leading to losses, substantial redemption requests and liquidity strains for some investment funds holding less liquid assets; (ii) a rise in liquidity and credit risks as bond funds further increase their holdings of lower-rated and less liquid fixed income securities; and (iii) excessive use of leverage and interconnectedness that might magnify shocks to financial stability.

Date of publication: 15/07/2022

(iii) Eurozone

SRB: Resolvability Assessment and Heat-map

Status: Final

The SRB has published its assessment of bank resolvability in the Banking Union, for the first time. The resolvability assessment and 'heat-map' for 2021 shows that banks have made significant progress in the SRB's priority areas. The assessment is based on the information available to the SRB up until the end of September 2021. It is benchmarked against the phase-in of the Expectations for Banks (EfB), to be completed by the end of 2023. Overall, sound progress has been made on the resolution capabilities that the SRB prioritised in 2020-2021, with largest banks (globally systemic important institutions and top tier banks) the most advanced category. Banks have significantly improved their ability to absorb losses and recapitalise in the case of failure. This concerns, for all banks, the steady build-up of their Minimum Requirement for Own Funds and Eligible Liabilities (MREL) capacity, crucial to execute any bail-in strategy. Most banks already meet the final MREL target to be complied with at the end of the transition period, on 1 January 2024 and the shortfall has more than halved in two years. Progress has also been observed in the areas of governance, loss absorption and bail-in execution, operational continuity, access to financial market infrastructures and communication planning. Areas for improvement relate mainly to those parts of the EfB that have been earmarked for implementation in 2022 and 2023. Progress is needed by all banks on the swift mobilisation of liquidity and collateral in resolution, the further automation of the management information systems for the purposes of valuation and resolution as well as the further operationalisation of restructuring and separation capabilities post-resolution. The SRB intends to publish the updated resolvability assessment annually. The priorities for the 2022 assessment remain the same, while those for the 2023 assessment will be communicated to banks in Q3 2022. They will include finalising the work on liquidity and other remaining capabilities, as well as ensuring full compliance with the final MREL targets.

Date of publication: 13/07/2022

1.3 Stress tests/Macroprudential topics

(i) EU

EBA: Methodology for the EU-wide stress test in 2023

Status: Draft

The EBA has published a draft version of its 2023 EU-wide stress test draft methodology, templates and template guidance, for discussion with the industry. The objective of the EU-wide stress test is to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks and the EU banking system to shocks, and to challenge the capital position of EU banks. The exercise is based on a common methodology and a set of templates that capture starting point data and stress test results. The EBA has published draft versions of the:

(i) [methodological note](#). It aims to provide banks with adequate guidance and support for performing the EU-wide stress tests;

and (ii) [draft templates and guidance on the templates](#). The methodology covers all risk areas and builds on the one prepared for the 2021 EU-wide stress tests. Some aspects of the methodology have been improved based on the lessons from the 2021 exercise – for instance, the projections on net fee and commission income will be based on a top-down model.

The 2023 exercise will assess EU banks' resilience to an adverse economic shock and inform the 2023 Supervisory Review and Evaluation Process. The final methodology will be published by the end of 2022. The EU-wide stress test will be launched in January 2023 and the results are expected to be published by the end of July 2023.

Date of publication: 21/07/2022



2. Investment firms regulation

(i) EU

EBA: Final report on Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of the IFR

Status: Final

The EBA has published its final report on Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of the IFR. These Guidelines aim to ensure that all competent authorities granting this exemption follow the same harmonised approach, while preserving the IFR general objective of maintaining the prudential requirements proportional to the size and complexity of the smaller investment firms. In this regard, these Guidelines particularly address: (i) the set of investment services and activities which make an investment firm eligible for the exemption; (ii) the set of criteria a competent authority should assess before granting the exemption; and (iii) guidance for competent authorities when granting and withdrawing the exemption.

Date of publication: 29/07/2022

EBA: Final report on draft RTS on Pillar 2 add-ons for investment firms under Article 40(6) of the IFD

Status: Final

The EBA has published a final report on draft RTS on Pillar 2 add-ons for investment firms under the IFD. These draft RTS clarify how competent authorities should measure risks or elements of risks that investment firms face or pose to others, which are not covered or not sufficiently covered by the own funds requirements set out in Parts Three and Four of the IFR. The report follows the EBA's November 2021 consultation and a summary of the feedback is set out in chapter 4.2. Most of the comments touched upon three areas: (i) the assessment of risks that are excluded from own funds requirements; (ii) the expression of additional capital requirements; and (iii) the metrics relative to risks-to-clients. Changes have been made to the draft RTS as a result of the feedback.

The draft RTS will be submitted to the EC for endorsement before being published in the OJ. The EBA want the RTS to be in force when the SREP Guidelines for investment firms under the IFD, set out in the entry below, become applicable.

Date of publication: 21/07/2022

EBA/ESMA: Final report on joint Guidelines on common procedures and methodologies for the SREP under the IFD

Status: Final

The EBA and ESMA have published a final report on joint Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) for investment firms under the IFD. The final SREP Guidelines set out the common process and criteria for the assessment of the main SREP elements, including: (i) business model; (ii) governance arrangements and firm-wide controls; (iii) risks to capital and capital adequacy; and (iv) liquidity risk and liquidity adequacy. The consistency and comparability of assessment is facilitated by the common scoring framework, differentiating between risks and viability scores. The scores of individual risks and SREP elements are brought together to form an overall SREP score, reflecting the assessment of the viability of the investment firm. The outcome of the assessment is the basis for taking any necessary supervisory measures to address specific risks and concerns. Therefore, guidance is provided on the application of supervisory measures, including quantitative capital and liquidity measures as well as other qualitative measures. The Guidelines specify common procedures and methodologies for SREP which are proportionate to the different sizes and business models of investment firms, and the nature, scale and complexity of their activities. In particular, investment firms are classified into four distinct categories, which translate into different frequency, depth and intensity of the assessments, and the engagement of the competent authority.

The Guidelines will be translated into the official EU languages and published on the EBA and ESMA websites. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the

translations. The date of application remains to be “inserted by the editor” but the Guidelines do state that they should be immediately applicable to the SREP exercises initiated in 2023.

Date of publication: 20/07/2022

Commission Delegated Regulation (EU) 2022/1159 supplementing the IFR with regard to RTS for public disclosure of investment policy by investment firms

Status: Published in the OJ

Date of entry into force: 26/07/2022

The Commission Delegated Regulation (EU) 2022/1159 supplementing the IFR with regard to RTS for public disclosure of investment policy by investment firms has been published in the OJ. Article 52 of the IFR requires investment firms other than small and non-interconnected investment firms to publicly disclose information on their investment policy. The disclosure required includes information on the proportion of voting rights attached to the shares held directly or indirectly by the investment firms, information on their voting behaviour, an explanation of votes and the ratio of proposals put forward and approved, information on the use of proxy advisor firms and information on their voting Guidelines. This Regulation aims at specifying templates for the required disclosure, in response to the need for consistent and comparable public information on the public policy of investment firms. The provisions of the Regulation aim at ensuring that the templates and tables used by investment firms for investment policy disclosures convey sufficiently comprehensive and comparable information on their voting behaviour and how it influences their investee companies.

Date of publication: 06/07/2022

3. Market regulation/Conduct rules

3.1 General

(i) EU

EC: Report on an EU SME referral scheme

Status: Final

The EC has published a report, dated 28 June, outlining the merits and feasibility of setting up a referral scheme to require banks (and other providers of funding) to direct small and medium enterprises (SMEs) to alternative providers of funding in case they turn down their funding application. The EC examined how SMEs might be directed to alternative providers of funding to facilitate their access to a wider set of funding options. The report sets out the perceived problems, current rules and their limitations and the objectives of the scheme, provides background on SME funding and rejected loan applications and analyses the merits of a number of possible solutions to the identified problems. It also considers a number of ongoing developments that might impact the feasibility of a referral scheme in the future and that might, therefore, warrant an update of the analysis. The report presents three alternative approaches to setting up an SME referral scheme.

The EC concludes that the approach involving uploading SME information onto the European Single Access Point (ESAP) could have the most potential to address the identified issues effectively and the least costs for stakeholders. Under this approach, banks turning down an SME credit application could be required, upon the SME's consent, to upload information directly onto the public ESAP platform, making them more visible to investors. The EC, in view of the ongoing negotiations on the ESAP proposal and SMEs' current stance on the data privacy, intends to wait for an actual setup of ESAP before considering any next steps. The EC notes that as ESAP is being implemented, both SMEs and alternative funding providers can be expected to become more familiar with the platform and make use of it as a means to seek and offer alternative funding. In parallel, the principles of "open finance" could also be further investigated as a possible alternative avenue. Here, banks and other funding providers could share the SME information directly among each other, subject to SME's consent.

Date of publication: 07/07/2022

3.2 Benchmarks

(i) EU

ESMA: Consultation on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition

Status: Final

Deadline for the submission of comments: 30/09/2022

ESMA began consulting on extending the scope of the clearing obligation (CO) and derivatives trading obligation (DTO), in the context of the benchmark transition in the interest rate derivative market. This is the second set of RTS, which complement the first that entered into force on 18 May. Specifically, for the CO they propose: (i) to introduce the overnight index swaps (OIS) class referencing TONA (JPY); (ii) to expand the maturities in scope of the CO for the OIS class referencing SOFR (USD); and (iii) that the DTO introduces certain classes of OIS referencing €STR (EUR), which have shown a substantial increase in liquidity over the last months.

ESMA intends to finalise the draft RTS by the end of the year, which will then be submitted to the EC for endorsement.

Date of publication: 11/07/2022

ESMA: Consultation on the review of the RTS on the form and content of an application for recognition under the Benchmarks Regulation

Status: Final

Deadline for the submission of comments: 09/09/2022

ESMA began consulting on amendments to the RTS on the form and content of an application for recognition under the BMR. ESMA aims to: (i) align the information provided in a recognition application with the changes introduced to the BMR in the ESAs Review, with the transfer of supervisory responsibilities over third-country-recognised administrators to ESMA as of January 2022; and (ii) ensure that the application includes all relevant information to enable ESMA to assess whether the applicant has established all the necessary arrangements to fulfil the BMR's requirements.

ESMA expects to submit the draft technical standards to the EC for endorsement in Q4 2022.

Date of publication: 08/07/2022

3.3 Capital markets union

(i) EU

EC: Report on the current framework for qualification of financial advisors in the EU and assessment of possible ways forward

Status: Final

The EC has published a report, dated 30 June, on the current framework for qualification of financial advisors in the EU, and assessment of possible ways forward. This report examines the feasibility of possible improvements to the quality of financial advice in the EU, as well as the feasibility of setting up a pan-EU label for financial advisors. It analyses the current framework for financial advisors, including the legal framework for qualifications of advisors in MiFID II and the Insurance Distribution Directive, and provides an overview of national requirements regarding knowledge and competence for individuals providing advice, as well as a rationale for improving quality of financial advice at EU level. Higher retail investor participation in capital markets is crucial to helping EU capital markets grow and offering individuals more opportunities to manage their financial situation. However, the EC found that, despite requirements introduced at EU level, the extent of qualifications, knowledge and skill of financial advisors continues to differ across Member States.

Accordingly, the report identifies that the specific objectives in this area should be on: (i) increasing the level of qualifications of financial advisors in the EU, including in relation to sustainability; (ii) aligning standards across Member States and across sectorial legislation in order to ensure consistency; and (iii) facilitating cross-border provision of services and recognition of standards. Several ways forward are identified by the report, but the feasibility of a pan-EU label for advisors is ruled out, notably due to concerns regarding its successful uptake and the likely high administrative costs. The EC concludes that options to further strengthen the requirements and standards for advisors at EU level could be further explored, notably as part of the future Retail Investment Strategy.

Date of publication: 07/07/2022

3.4 Consumer protection rules

(i) EU

EP: Agreement on position on proposed Revised Consumer Credit Directive

Status: Draft

The EP has announced that it has agreed a position on the legislative proposal for a Directive on consumer credits to revise and replace the current CCD. The EP highlights aspects of its mandate including: (i) the Directive should cover credit agreements of up to €150,000, with the upper limit to be determined by the relevant national authorities. Member states will also be able to apply limited changes to the obligations in the case of small value loans of up to €200, loans granted interest-free and without other charges, or loans that have to be repaid within three months and with minor charges; (ii) further requirements to assess the

creditworthiness of someone taking out a loan before it is granted should be included, including requiring information on a consumer's current obligations or cost-of-living expenses. In order to assess the creditworthiness of consumers with little or no credit history, other information can be taken into consideration, such as from non-banking lenders, telecommunication providers and utilities. However, data from social media and health data should not be taken into account and the right to be forgotten should be respected. The EBA should develop Guidelines detailing how creditors and providers of crowdfunding credit services perform this creditworthiness assessment; (iii) consumers should always be able to obtain standard information that is clear, with the essential information viewable, even on a phone screen. They should also be reminded that they have the right to withdraw from the credit agreement or the agreement for the provision of crowdfunding credit services without giving any reason within 14 calendar days; (iv) credit advertising should contain, in all cases, a clear and prominent warning that borrowing money costs money, and it should not incite over-indebted consumers to seek credit or suggest that success or social achievement can be acquired thanks to credit agreements; and (v) Overdraft facilities and credit overrunning should be regulated. The EP will now commence triilogue negotiations with the Council and the EC.

Date of publication: 12/07/2022

3.5 Credit rating agencies

(i) EU

ESMA: Final report on the revision to Guidelines and Recommendations on the scope of the CRA Regulation

Status: Final

ESMA has published its final report on revisions to its 2013 Guidelines and Recommendations on the scope of the CRA Regulation. The purpose of these Guidelines is to deliver additional guidance in the specific case of private credit ratings. Among other measures, ESMA intends to amend the Guidelines to clarify that: (i) a private credit rating should be produced only following an explicit order, formalised through a written agreement between the person placing the order and the rating provider. ESMA expects this agreement to contain a specific provision indicating the exclusive issuance of the rating to the person who placed the order, who should sign a non-disclosure undertaking, precluding the dissemination of the rating to more than a limited number of third parties; and (ii) the receiving party to a private credit rating should share the private credit rating only on a confidential basis and with a selected and definite number of natural or legal persons. This number should be limited and can never exceed a total of 150. To ensure that this maximum limit is adhered to, appropriate controls should be implemented by the rating provider to allow for monitoring distribution.

The revised Guidelines will apply from 18 months following the date of their publication.

Date of publication: 15/07/2022

3.6 Market abuse

(i) EU

Commission Implementing Regulation (EU) 2022/1210 laying down ITS for the application of the MAR with regard to the format of insider lists and their updates

Status: Published in the OJ

Date of entry into force: 03/08/2022

Commission Implementing Regulation (EU) 2022/1210 laying down ITS for the application of MAR with regard to the format of insider lists and their updates has been published in the OJ. The Implementing Regulation reflects the amendments made to MAR by the Prospectus Regulation, which introduced less stringent requirements for issuers whose financial instrument are admitted to trading on an SME growth market by limiting the persons listed to those who, due to the nature of their function or position within the issuer, have regular access to inside information. Member States may require SME growth market issuers nonetheless to apply the full MAR list; however the Implementing Regulation provides a less administratively burdensome format of the list, limiting the content to what is strictly necessary to identify the relevant individuals. SME growth market issuers are also exempted from the requirement for issuers to keep the insider list in an electronic format, as long as the

completeness, confidentiality and integrity of the information is ensured. The Implementing Regulation compiles the formats of all insider lists referred to in MAR in one legal act, repealing Implementing Regulation 2016/347.

Date of publication: 14/07/2022

EC: Commission Delegated Regulation (EU) .../... supplementing the MAR with regard to RTS setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market

Status: Adopted by the EC

The EC has adopted a Delegated Regulation with regard to RTS setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market under MAR. The RTS sets out the requirements that parties to a liquidity contract should comply with in order to make sure that such persons are not engaging in market manipulation. In particular, the contractual template sets out the requirements to comply with the criteria established in Article 13(2) of MAR with which the parties to a liquidity contract concerning shares of an issuer listed on an SME GM should comply in order to be covered by the safe harbour pursuant to article 13 MAR. The main areas covered by the RTS are the liquidity account, limits on resources, independence of the liquidity provider, trading of the liquidity provider, obligations of the liquidity provider, fees structures and remuneration, and transparency.

The Council and the EP will now scrutinise the Delegated Regulation.

Date of publication: 13/07/2022

3.7 MiFID/MiFIR

(i) EU

Commission Implementing Regulation (EU) 2022/1300 amending Implementing Regulation (EU) 2017/1093 laying down ITS with regard to the format of position reports by investment firms and market operators

Status: Published in the OJ

Date of entry into force: 15/08/2022

The Commission Implementing Regulation (EU) 2022/1300 amending Implementing Regulation (EU) 2017/1093 laying down ITS with regard to the format of position reports by investment firms and market operators has been published in the OJ. The ITS update the table on position reports as reporting no longer applies to certain commodity derivatives and aims to supplement MiFID II in response to changes made by the Covid-19 MiFID II Amending Directive ((EU) 2021/338).

Date of publication: 26/07/2022

Commission Delegated Regulation (EU) 2022/1302 supplementing MiFID II with regard to RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits

Status: Published in the OJ

Date of entry into force: 15/08/2022

The Commission Delegated Regulation (EU) 2022/1302, supplementing MiFID II with regard to RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits, has been published in the OJ. It supplements MiFID II in response to changes made by the Covid-19 MiFID II Amending Directive ((EU) 2021/338), and, in particular, repeals and replaces Commission Delegated Regulation (EU) 2017/591, also making amendments based on experience over previous years with the existing methodology.

Date of publication: 26/07/2022

Commission Delegated Regulation (EU) 2022/1299 supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues

Status: Published in the OJ

Date of entry into force: 15/08/2022

The Commission Delegated Regulation (EU) 2022/1299, supplementing MiFID II with regard to RTS specifying the content of position management controls by trading venues, has been published in the OJ. It supplements MiFID II in response to changes made by the Covid-19 MiFID II Amending Directive ((EU) 2021/338) and, in particular, aims to ensure a more harmonised implementation of the position management controls by trading venues by specifying the content of position management controls and taking into account the characteristics of the trading venues concerned.

Date of publication: 26/07/2022

ESMA: Q&A on MiFIR data reporting

Status: Final

ESMA has updated its Q&A on MiFIR data reporting. In particular, section 19 on the reporting of emission allowances has been updated.

Date of publication: 19/07/2022

ESMA: Q&A on MiFID II and MiFIR market structures topics

Status: Final

ESMA has updated its Q&A on MiFID II and MiFIR market structures topics. The updated Q&A includes the following new questions on algorithmic trading: (i) do orders that are executed through trading functionalities which offer automated managing of the order qualify as algorithmic trading?; and (ii) how should firms ensure compliance with the requirements in Article 17 of MiFID II and RTS 6 when using third-party systems which offer algorithmic trading functionalities?

Date of publication: 15/07/2022

Commission Implementing Regulation (EU) 2022/1220 laying down ITS for the application of MiFID II with regard to the format in which branches of third-country firms and competent authorities have to report the information referred to in Article 41(3) and (4) of MiFID II

Status: Published in the OJ

Date of entry into force: 04/08/2022

The Commission Implementing Regulation (EU) 2022/1220, laying down ITS for the application of MiFID II with regard to the format in which branches of third-country firms and competent authorities have to report the information referred to in Article 41(3) and (4) of MiFID II, has been published in the OJ. According to Article 41(3) of MiFID II, branches of third-country firms that have been authorised in accordance with Article 41(1) of that Directive are to report to the competent authority of the Member State where that authorisation was granted, on an annual basis, the information laid down in that Article 41(3). The Implementing Regulation includes rules on the format of the information as well as a timeframe for when that information is to be provided to competent authorities.

Date of publication: 15/07/2022

ESMA: Opinion on the classification of third-country financial entities in weekly position reports under MiFID II

Status: Final

ESMA has published an opinion to clarify the classification of third-country counterparties in weekly position reports under MiFID II. To improve the quality and consistency of these reports, ESMA considers that financial entities holding positions in commodity derivatives, or emission allowances or derivatives thereof, should be categorised in a consistent manner irrespective

of their geographical location. Third-country financial entities should be categorised according to the nature of their main business in the same way as they would be categorised if they were established in the EU and subject to EU law.

NCA's should ensure that trading venues reflect the amended classification in the weekly reports at the latest three months after the publication of ESMA's opinion; that is by 12 October.

Date of publication: 12/07/2022

ESMA: Correction of double volume cap results

Status: Final

ESMA has updated the double volume cap (DVC) results following a data correction submitted by a reporting entity. This data correction impacts the results for five ISINs for which the suspension had been erroneously revoked from 12 July. The suspension of the five ISINs is expected to be resumed from 18 July and end on the suspension end dates provided in ESMA's update.

Date of publication: 12/07/2022

ESMA: Report on sanctions and measures imposed under MiFID II in 2021

Status: Final

ESMA has reported on the sanctions and measures imposed under MiFID II in 2021. While NCA's activity in imposing sanctions and measures under MiFID II has decreased compared to 2020, both the number of Member States where sanctions and measures were applied and the total number of imposed administrative fines increased in 2021. ESMA notes that there are still some differences in the identification of sanctions and measures for the purpose of the reporting to ESMA, and the distinction among them. The information reported to ESMA and included in this report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the MiFID II framework and contribute to ESMA's goal to develop an EU outcome-focused supervisory and enforcement culture.

Date of publication: 08/07/2022

ESMA: Consultation on the review of the Guidelines on MiFID II product governance requirements

Status: Consultation

Deadline for the submission of comments: 07/10/2022

ESMA has published the results of its common supervisory action (CSA) with NCA's on the application of MiFID II product governance rules. Areas of improvement highlighted by ESMA include: (i) while firms generally define a target market for the products they manufacture and/or distribute in accordance with the Guidelines, in some cases the definition appears to be approached as a formalistic exercise as it is done at an insufficiently granular level and with the use of unclearly defined terms. The definition does not always translate into a compatible distribution strategy; (ii) a lack of convergence has emerged on how firms perform a scenario analysis, as required under Article 9(10) of the MiFID II Delegated Directive and it is sometimes unclear how these scenarios are actually used by firms for the product's target market identification; (iii) the performance of charging structure analysis, as required under Article 9(12) of the MiFID II Delegated Directive. For example, manufacturers' procedures insufficiently describe how a product's cost structure is evaluated to ensure compatibility with the product's target market; (iv) infrequent product reviews with inadequate scope to verify if the financial instrument remains consistent with the needs, characteristics and objectives of the target market; and (v) insufficient information exchange between manufacturers and distributors. ESMA has therefore decided to review its Guidelines on the MiFID II product governance requirements to address the most relevant areas where a lack of convergence has emerged and to complement the Guidelines with relevant examples of good practice that emerged from the CSA.

The review also aims to align the Guidelines to the revised MiFID II Delegated Directive on the topic of sustainable finance and to the revised MiFID II in the context of the Commission's Capital Markets Recovery Package. The main proposals in the draft Guidelines relate to: (a) the specification of any sustainability-related objectives a product is compatible with; (b) the practice of identifying a target market per cluster of products instead of per individual product ("clustering approach"); (c) the

determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and (e) the periodic review of products, including the application of the proportionality principle.

ESMA expects to publish a final report in Q1 2023.

Date of publication: 08/07/2022

EP: Motion for a resolution to object to EC MiFID II RTS on application of position limits to commodity derivatives

Status: Draft

The EP has published a motion for a resolution to object to the EC's proposed Delegated Regulation supplementing MiFID II with regard to RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits. The EP calls on the EC and ESMA to fully evaluate the role and extent of speculation in the determination of commodities prices and raw materials while emphasising the need to urgently enhance financial transparency of the market trading of commodities, especially for food, energy and raw materials for fertilisers against insider dealing, market manipulation and price distortions, by strengthening reporting requirements through public registers of activities of market dealers, brokers and traders. The EP requests that the EC submit a new delegated act which addresses these concerns.

Date of publication: 30/06/2022

ESMA: No publication of the August SI regime data for non-equity instruments other than bonds and CTP data

Status: Final

ESMA has announced that it will not publish the 1 August 2022 systematic internaliser (SI) regime data for non-equity instruments other than bonds and consolidated tape (CTP) data. This is due to operational constraints which prevent it from performing the scheduled calculations. The non-publication of the data means that the mandatory SI regime will not apply from 15 August to 14 November, and investment firms will not need to perform the SI test for non-equity instruments other than bonds. However, investment firms can continue to opt into the SI regime in the interim period. The SI calculations for non-equity instruments other than bonds will resume on 1 November, based on an observation period from 1 April to 30 September. Investment firms will then be required to perform the SI determination by 15 November. The publication of the SI data for equity, equity-like instruments and bonds will not be affected, and will be made available by 1 August, as planned. Therefore, investment firms are required to perform the SI test for those asset classes, and comply with the related obligations, by 15 August. The CTP calculations will resume at the next regular publication date on 1 February 2023 based on an observation period from 1 July 2022 to 31 December 2022. ESMA reminds reporting entities of their obligations to continue reporting transparency data, also in the absence of the August publication for non-equity instruments other than bonds, in order to ensure that the transparency data covers trading activity necessary for subsequent transparency calculations.

Date of publication: 28/06/2022

3.8 Prospectus regulation

(i) EU

ESMA: Public statement on prospectus supervision in the context of EU sanctions connected to Russia's invasion of Ukraine

Status: Final

ESMA has published a statement on prospectus supervision in the context of EU sanctions connected to Russia's invasion of Ukraine. The public statement alerts stakeholders to the EC's FAQs, in particular in response to queries whether there is sufficient legal basis to refuse the approval of a prospectus if there are prohibited relationships under EU sanctions or if infringements of EU sanctions are suspected during the prospectus scrutiny and approval process undertaken by National Competent Authorities (NCAs). The EC explains that infringements of EU sanctions can constitute sufficient legal basis for an NCA to refuse the approval of a prospectus. Issuers submitting a prospectus to an NCA should note that they may receive

questions and/or requests for additional documentation from NCAs concerning the areas and parties identified by EU sanctions. These questions or requests for additional information may occur when the prospectus is first submitted or at any time during the scrutiny and approval process. ESMA will continue to monitor closely developments concerning EU sanctions and will continue to work with supervisors to discuss questions arising from this situation. Any relevant further information will be communicated where necessary.

Date of publication: 08/07/2022

3.9 Securities financing transactions

(i) EU

ESMA: Q&A on SFTR data reporting

Status: Final

ESMA has updated its Q&A on SFTR data reporting. It therefore added new Q&A on the construction of a trade state report, and the reporting of valuation and collateral on the last day of a securities financing transaction.

Date of publication: 19/07/2022

ESMA: Third statement on the implementation of LEI requirements for third-country issuers under the SFTR reporting regime

Status: Final

ESMA has issued a third statement on the implementation of Legal Entity Identifier (LEI) requirements for third-country issuers under the SFTR reporting regime. ESMA acknowledges the potential reporting implementation issue with respect to SFTs entered into by EU investors for securities of third-country issuers. In particular, in third-country jurisdictions LEIs are not widely mandated beyond dealers of derivatives, therefore a significant number of issuers still do not have an LEI. Neither ESMA nor NCAs possess any formal power to dis-apply a directly applicable EU legal text. Therefore, any change to the application of the EU rules would need to be implemented through EU legislation. ESMA expects that counterparties, as well as the other entities participating in SFTs that lend, borrow or use as collateral securities issued by third-country entities that do not have an LEI, liaise with those issuers with a view to ensuring that they are aware of the requirements under SFTR. ESMA invites the entities that take part in SFTs reportable under SFTR to make use of the relevant solutions put in place by the Global LEI Foundation to facilitate LEI coverage, such as the use of LEI validation agents. ESMA expects that trade repositories would not reject SFT reports of securities without a third-country issuer LEI that are lent, borrowed or provided as collateral in an SFT. However, this does not in any way affect the mandatory reporting of the LEI in all other cases where it is prescribed by the regulation, including the identification of third-country entities taking part in an SFT. ESMA expects NCAs to continue not prioritising their supervisory actions in relation to reporting of LEIs of third-country issuers. ESMA and the NCAs will continue to closely monitor: (i) the evolution of the issuance of LEI for third-country issuers; (ii) the population of the field “LEI of the issuer” for third-country entities; and (iii) the structural evolution of the SFT markets in the EU, in order to assess on an ongoing basis the developments regarding the use of LEI of third-country issuers. ESMA will give at least six months’ notice of regarding its position on the reporting of LEI for third-country issuers ahead of the date of application of this requirement in the SFTR validation rules.

Date of publication: 12/07/2022

3.10 Transparency requirements/Shareholder requirements

(i) EU

ESMA: Practical Guide on national rules on notifications of major holdings under the Transparency Directive

Status: Final

ESMA has published a Practical Guide on the national rules on notifications of major holdings under the Transparency Directive, which summarises the main rules and practices applicable across the European Economic Area (EEA) in relation to notifications of major holdings under national law in accordance with the Transparency Directive. It is intended to help market participants, particularly shareholders with notification obligations under national law in accordance with the Transparency Directive, with fulfilling these obligations.

Date of publication: 01/07/2022

4. Market infrastructure

4.1 Custody rules

(i) EU

ESMA: Consultation on an amendment of Article 19 of CSDR RTS on settlement discipline

Status: Final

Deadline for the submission of comments: 09/09/2022

ESMA began consulting on an amendment to the cash penalty process for cleared transactions under CSDR. ESMA seeks to simplify the process of collection and distribution of cash penalties for settlement fails relating to cleared transactions. ESMA's proposal consists of removing the separate process established in Article 19 of the Delegated Regulation (EU) 2018/1229 for the collection and distribution of cash penalties in relation to settlement fails on cleared transactions and letting the CSDs run the entire process of collection and distribution of penalties. Currently, CCPs are responsible for the collection and distribution of cash penalties for settlement fails on cleared transactions.

ESMA intends to publish a final report including an amending RTS to be submitted to the EC by Q4 2022.

Date of publication: 11/07/2022

Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2018/1229 as regards the date of application of the provisions related to the buy-in regime

Status: Adopted by the EC

The EC has adopted a draft Delegated Regulation amending the RTS on settlement discipline laid down in Delegated Regulation (EU) 2018/1229 to defer the date of application of the provisions related to the mandatory buy-in regime under the CSDR. The draft Delegated Regulation defers the application of the mandatory buy-in rules for three years, to allow time for the EC, EP and Council of the EU to determine the best way forward to improve settlement efficiency. This is necessary because the CSDR Refit legislative proposal, published by the EC in March, includes potential amendments to the mandatory buy-in rules and related Level 2 measures.

If neither the Council of the EU nor the EP object to the draft Delegated Regulation, it will enter into force 20 days after its publication in the OJ.

Date of publication: 06/07/2022

4.2 EMIR

(i) EU

ESMA: Annual peer review of EU CCP supervision

Status: Final

ESMA has published a report on its 2021 annual peer review analysis of the supervision of EU Central Counterparties (CCPs) by National Competent Authorities (NCAs), in accordance with EMIR. The peer review measured the effectiveness of NCA supervisory practices in assessing CCP compliance with EMIR's requirements on business continuity, in particular in remote access mode. The report summarises that participating NCAs have broadly met supervisory expectations. Some aspects of business continuity in remote access mode were not always specifically assessed. In most cases, this is because at many CCPs

remote working was already common practice or part of existing business continuity arrangements. In this context, remote working did not introduce any major new risks to be re-assessed.

Nevertheless, the report makes three observations: (i) NCAs could better clarify, when defining their risk-based approach, how operational risks related to remote access are addressed; (ii) from a supervisory perspective, CCPs could better clarify the risk-based scope of penetration testing and how risks related to remote access are addressed as part of this; and (iii) business continuity management plans could be improved by taking into account other extreme scenarios, where remote working arrangements could serve to ensure business continuity. The report also identifies ten best practices from NCAs' supervisory activities and approaches. Implementing these best practices would address the three observations. Finally, while the new EU legislative proposal for Digital Operational Resilience Act (DORA) is going to establish a new regulatory framework applying also to CCPs, it could be considered whether there remain areas for improvement within the EMIR framework, in order to strengthen the enforcement of EMIR requirements with respect to business continuity (not addressed by DORA). ESMA suggests that this could be addressed via a review of the relevant RTS under EMIR. ESMA will follow up on the findings listed to identify, where relevant, the most appropriate tools to further enhance supervisory convergence. NCAs are expected to consider implementing the best practices outlined.

Date of publication: 19/07/2022

ESMA: Speech on key trends in cleared derivatives

Status: Final

ESMA published a speech by Klaus Löber, Chair of ESMA's CCP supervisory committee on key trends in cleared derivatives. Mr Löber discusses the lessons to be learnt for CCPs, the broader clearing ecosystem and for supervisors from the recent period of instability due to the Covid-19 pandemic and Russia's invasion of Ukraine. He notes that at this stage, ESMA has not identified major weaknesses, although some CCPs are reviewing their margin models and their list of eligible collateral. Highlights include: (i) CCP membership due diligence will be the topic of ESMA's 2022 Peer Review; (ii) ESMA will interact with NCAs, on a CCP-by-CCP basis, to further strengthen the use of concentration add-ons to cover concentrations risks, where needed, including in commodity markets. Concentration risks will be the topic of the 2023/2024 CCP Peer Review, including risks in relation to commodity derivatives and emissions certificates; (iii) ESMA will undertake further analysis to enhance the identification of indirect participants responsible for a significant proportion of transactions and the identification of material dependencies between direct and indirect participants that may affect the CCP; (iv) ESMA will work closely with the ESRB and SSM in the analysis of the dependencies and interconnectedness of CCPs, clearing members and clients in the commodities market, but also on clearing members and CCPs being part of the same legal entity; (v) ESMA has begun developing an enhanced crisis management framework that could be used by the CCP supervisory committee to support crisis preparedness; and (vi) the committee intends to build a structured framework for stress-testing based on a multi-year plan to progressively challenge untested dimensions of CCP resilience. Building on the results of the fourth CCP stress test, ESMA's CCP stress-testing framework will progressively expand to other emerging risks such as cyber threats and more complex and multi-faceted risks linked to climate change.

Date of publication: 13/07/2022

ESRB: View on data quality issues and risks for financial stability

Status: Final

ESRB has published a letter sent to the EC concerning persistently poor data quality and the risks this poses for financial instability. The letter contains proposals to address these issues and at the same time to strengthen the supervisory framework for central clearing in the EU and increase the attractiveness of EU clearing. The ESRB suggests that some of its proposals may be taken into consideration by the EC in the context of the targeted EMIR review, while others more generally encompass the scope of other reporting frameworks as well, such as the SFTR and Public Quantitative Disclosure data. The proposals include: (i) extending reconciliation requirements to centrally cleared transactions; (ii) the appointment of a responsible reporting officer; (iii) expanding the scope of reporting, such as to include default fund contributions in EMIR data and extending the reporting obligation to financial and non-financial subsidiaries of EU groups; (iv) requiring a quick aggregative-level check on submissions; (v) developing a reporting handbook to provide more clarity on the reporting specifics. This reporting handbook could be introduced via Level 3 legislation; and (vi) remove any barrier to machine-readable/automated reporting.

Date of publication: 13/07/2022

ESMA: Public statement on updates of third-country CCPs' applications for recognition

Status: Final

ESMA announced an update for third-country CCPs (TC-CCPs) whose applications for recognition under EMIR were suspended until 28 June: (i) pending recognition decisions – as regards TC-CCPs which are established in jurisdictions for which the EC has recently adopted equivalence decisions, i.e. Chile, China, Indonesia, Israel and Malaysia, ESMA has started processing their applications for recognition and will adopt decisions granting recognition once the relevant recognition conditions are met. The recognition procedure in EMIR includes the signing of an MoU with the relevant third-country competent authorities and the relevant EU NCAs and EU authorities. ESMA states that it will do its utmost to expedite the process; and (ii) refusal of recognition – for TC-CCPs which are established in jurisdictions for which the EC did not adopt equivalence decisions by 28 June, i.e. Argentina, Colombia, Russia, Taiwan, Thailand and Turkey, ESMA will start the process for refusing recognition. Should the EC adopt the relevant equivalence decision in the future, a TC-CCP, whose application was originally refused, can re-apply for recognition to ESMA. Until ESMA has taken a decision on granting or refusing a recognition under EMIR, a TC-CCP, who had applied under the EMIR transition provisions, and currently provides clearing services in a Member State under national law, may continue to provide clearing services in that Member State.

Date of publication: 08/07/2022

ESMA: Report on the fourth ESMA stress test exercise for CCP

Status: Final

ESMA has published a report setting out the results of its fourth EU-wide stress test exercise for CCPs, which includes both EU and Tier 2 third-country CCPs, alongside accompanying Q&As. The results confirm the overall resilience of EU CCPs, as well as Tier 2 third-country CCPs, to credit, concentration and operational risks under the tested scenarios and implemented framework. However, it also identifies areas where some CCPs may need to strengthen their risk management frameworks, or where further supervisory work should be prioritised, including on concentration and operational risks.

The report's key findings include: (i) CCPs have sufficient buffers to withstand adverse market developments in combination with the default of the two clearing members with the largest exposures; (ii) gaps exist between the necessary and available buffers for concentration risks for some CCPs, particularly in commodity derivatives markets; (iii) CCPs overall remain resilient despite increased market volatility in the wake of Russia's invasion of Ukraine; (iv) for operational risk, differences in terms of risk sources, exposures and mitigation tools across CCPs are observed and need to be further assessed on an individual basis before potential recommendations can be issued; and (v) most of the analysed operational events stem from third-party services, whereas a number of critical third-party service providers have the potential to affect the critical functions of multiple CCPs in a correlated manner.

Where the assessments expose shortcomings in the resilience of one or more CCPs, ESMA will issue the necessary recommendations. In accordance with this report, ESMA has also published [Q&A on its stress test exercise regarding CCPs](#).

Date of publication: 05/07/2022

4.3 Stock exchanges

(i) International

BCBS: Consultative report on a facilitating increased adoption of payment versus payment

Status: Consultation

Deadline for the submission of comments: 30/09/2022

The BCBS has published a consultative report by the CPMI on facilitating increased adoption of payment versus payment (PvP) in order to reduce FX settlement risk and improve cross-border payments. PvP is a settlement mechanism that ensures that the final transfer of a payment in one currency occurs if, and only if, the final transfer of a payment in another currency takes place.

The report analyses the causes of non-PvP settlement, takes stock of existing and proposed new PvP solutions, and suggests roles for the private and public sectors, including central banks, to facilitate PvP adoption.

In particular, this consultation is directed at existing PvP arrangements, commercial banks and fintechs as well as other interested parties.

Date of publication: 29/07/2022

IOSCO: Final report on operational resilience of trading venues and market intermediaries during the Covid-19 pandemic & lessons for future disruptions

Status: Final

IOSCO has reported on the impact of the Covid-19 pandemic on the operations of trading venues and market intermediaries. The report concludes that these regulated entities largely proved operationally resilient and continued to serve their clients and the broader economy during the pandemic, despite unprecedented challenges. The pandemic also increased cyber security risks, accelerated the use of existing, new and emerging technologies, and disrupted some outsourcing arrangements. The findings suggest the existing IOSCO operational resilience principles, recommendations and guidance, which provide the core structure for regulated entities and regulators when considering operational resilience, have worked well.

However, the report sets out some observations for firms, including: (i) operational resilience means more than just technological solutions; it also depends on the regulated entity's processes, premises and personnel; (ii) firms should consider dependencies and interconnectivity before and after a disruption to adequately assess potential risks and changes to controls, especially for service providers and off-shore services; (iii) firms should review, update and test business continuity plans to ensure they reflect lessons learnt from the pandemic, such as the prolonged nature of the crisis and its impact on multiple locations, as well as the implication of remote/hybrid working and the importance of communication channels between regulators, key authorities, regulated entities and third-party service providers, to help understand any impacts on operational resilience; (iv) an effective governance framework facilitates and supports operational resilience during novel or unexpected situations; (v) compliance and supervisory processes with greater automation and less dependence on physical documents and manual processes may better accommodate a remote workforce; and (vi) decentralised and remote work may increase the importance of monitoring processes to help ensure information security and prevent cyber-attacks. IOSCO notes that these lessons are likely to be useful to address the impact of new scenarios such as the ongoing conflict in Ukraine.

Date of publication: 11/07/2022

5. Anti-money laundering

(i) Germany

BaFin: Circular 05/2022 regarding high-risk countries (*Rundschreiben 05/2022 (GW) zu Hochrisikostaaten*)

Status: Final

BaFin has published Circular 05/2022 to inform on third countries with strategic deficiencies in their anti-money-laundering and counter-terrorist financing systems that pose significant risks to the international financial system (high-risk countries).

The Circular is addressed to all obliged parties under BaFin supervision in accordance with the German Anti-Money-Laundering Act (*Geldwäschegesetz – GwG*) in Germany.

Date of publication: 04/07/2022

(ii) EU

ECB: Speech on digital technology and fighting financial crime

Status: Final

The ECB has published a speech by Elizabeth McCaul, Supervisory Board Member on digital technology and financial crime. Ms McCaul emphasises that technology is neither a panacea nor a poison, but a tool that can serve multiple purposes. Any technology solution needs to be buttressed by three pillars: an appropriate regulatory framework, sufficient supervisory oversight and a deep understanding by users, banks and supervisors alike, not only of the potential but also the limitations and risks of new technologies. Ms McCaul highlights specific challenges in digital finance, including: (i) some companies, in particular digital platforms or mixed activity groups, may not be fully captured by the regulatory framework and thus fall outside the scope of the AMLD; (ii) experience has shown that certain new entrants have an insufficient understanding of their AML/CFT obligations and suffer from structural weaknesses in their customer due diligence and know-your-customer frameworks; and (iii) there are AML/CFT challenges inherent to the business models of some new entrants such as new payment processing methods and the provision of cryptoasset services. Ms McCaul discusses how technology can help address these and other challenges such as machine learning tools based on AI being used to detect unusual transactions or to identify patterns of potential criminal activity in networks of funds and entities. Many banks are already also using AI: for credit scoring, algorithmic trading, robo-advice or chatbots. When it is used well, it is subject to strong governance, risk management, and first line internal controls that have strong quality assurance components. Ms McCaul strongly welcomes the EU's approach to develop a regulatory framework to provide harmonised rules on trustworthy AI. Ms McCaul notes that there are also benefits to be gained for supervisors through the use of SupTech. AI does not just offer substantial efficiency gains, but also improves risk identification processes through technology such as natural language processing.

Date of publication: 13/07/2022

(iii) International

FATF: Report on data protection, technology and private sector information sharing

Status: Final

The FATF has published a report on the fight against financial crime, with a focus on data protection, technology and private sector information sharing. The FATF explains that collaboration and information sharing help financial institutions to build a clearer picture of criminal networks and suspicious transactions, and to better understand, assess, and mitigate their money laundering, terrorist financing and proliferation financing risks. It can also provide authorities with better quality intelligence to investigate and prosecute these crimes. However, such collaboration initiatives need to be designed and implemented responsibly, in accordance with data protection and privacy rules, so that the risks associated with increased sharing of personal data are appropriately taken into account. The report provides non-binding recommendations to avoid common pitfalls and

assist countries that are considering increasing private sector information sharing to design and implement such initiatives responsibly and effectively.

These recommendations are based on observations and lessons learnt across jurisdictions of the FATF's global network. Recommendations for the private sector include: (i) make use of privacy-enhancing technologies; (ii) ensure harmonised data; (iii) pursue data protection by design; (iv) establish early and ongoing engagement with data protection authorities; and (v) identify metrics to measure success. The FATF explains that there is no one-size-fits-all solution that addresses all the objectives of data privacy and protection, anti-money laundering, countering the financing of terrorism, and countering proliferation financing for all financial institutions globally. Each information sharing initiative needs to be considered on a case-by-case basis depending on its unique characteristics and the relevant data privacy and protection requirements.

Date of publication: 20/07/2022



6. Payments

6.1 Payment services/E-money

(i) Germany

BaFin: Guidance Notice 04/2022 on the regulatory classification of certain payment transactions in stationary travel sales (*Merkblatt 04/2022 (BA) zur aufsichtsrechtlichen Einordnung bestimmter Zahlungsvorgänge im stationären Reisevertrieb*)

Status: Final

BaFin has published its Guidance Notice on the regulatory classification of certain payment transactions in stationary travel sales. The Guidance Notice does not contain any new regulatory requirements. It only clarifies BaFin's classification of certain business transactions in stationary travel sales under supervisory law in response to some uncertainty over the extent of the requirement for strong customer authentication under Section 55(1) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*). In doing so, BaFin makes it clear that strong customer authentication in accordance with the requirements of the PSD2 or the ZAG does not have to be carried out for these business transactions. This interpretation expressly applies only to stationary travel sales, but not to online bookings.

Date of publication: 28/07/2022

BaFin: New reporting procedure for major operational and security incidents (*Künftiges Meldeverfahren für schwerwiegende Betriebs- und Sicherheitsvorfälle*)

Status: Final

BaFin has announced that it has now activated a test environment on its electronic reporting and publication platform (*Melde- und Veröffentlichungsplattform – MVP*) in order to provide payment service providers subject to new reporting requirements – in line with [Circular 03/2022 on the reporting of major payments security incidents pursuant to Section 54\(1\) of the German Payment Services Supervision Act \(*Zahlungsdiensteaufsichtsgesetz – ZAG*\)](#) – with the opportunity to familiarise themselves with the amended procedure prior to the official start of this reporting function on 1 October 2022. This announcement is accompanied by a [Guide](#) on how to submit this type of report.

Date of publication: 06/07/2022

(ii) EU

EBA: Decision concerning reporting of payment fraud data under PSD2

Status: Final

Date of entry into force: 24/06/2022

The EBA has published a decision, dated 24 June, concerning the reporting of payment fraud data under the PSD2 by competent authorities. The decision covers the reporting to the EBA of aggregated statistical data on fraud from competent authorities designated under the PSD2 in accordance with Article 96(6) of the PSD2 and the EBA Guidelines on fraud reporting under the PSD2. Competent authorities report payment fraud data to the EBA under the PSD2, as specified in the EBA Guidelines on fraud reporting, via the European Centralised Infrastructure of Data (EUCLID), and according to the EBA Data Point Model (DPM). This decision allows for data to be submitted by the relevant competent authorities via the ECB to the EBA, with the aim of providing a streamlined submission of data and avoiding a burden of double reporting for competent authorities to both the EBA and the ECB. This is also the case for other data transmitted under the EUCLID decision, provided that the data submitted by the competent authorities is in accordance with the data breakdowns and validation rules set out by the EBA and in line with the format and timelines set out in the decision.

Date of publication: 01/07/2022

(iii) International

BCBS: Joint report on options for access to and interoperability of CBDCs for cross-border payments

Status: Final

The CPMI, the BIS Innovation Hub, the IMF and the World Bank have published a joint report on the options for access to and interoperability of CBDCs for cross-border payments. As central banks have varying motivations for exploring or developing CBDCs, they are likely to adopt different CBDC designs and cross-border arrangements. In this light, the report identifies and analyses different options for foreign access to CBDCs and their interoperability, which could improve cross-border payments, including how they can interconnect with non-CBDC payment arrangements.

The report assesses these options based on five criteria: (i) do no harm; (ii) enhance efficiency; (iii) increase resilience; (iv) assure coexistence and interoperability with non-CBDC systems; and (v) enhance financial inclusion. The report concludes that there is no “one size fits all” model for access to and interoperability with CBDCs. Accordingly, the report serves as a tool for central banks to assess how to best leverage CBDCs to enhance cross-border payments in the context of their own objectives. The report considers that even jurisdictions not planning to issue a CBDC ought to be involved in this work, as they will still be part of this new potential cross-border payments landscape.

The report presents three ways to achieve interoperability: (a) compatibility – individual CBDC systems using common standards, such that the operational burden on payment service providers for participating in multiple systems is reduced; (b) interlinking – establishing a set of contractual agreements, technical links, standards, and operational components between CBDC systems allowing participants to transact with each other without participating in the same system. CBDCs could be interlinked via different models – a single access point, bilateral link or “hub and spoke” model; and (c) a single system – an arrangement that uses a single common technical infrastructure hosting multiple CBDCs. Other considerations that are relevant to the design of cross-border CBDC solutions include ensuring compliance with AML/CFT rules while safeguarding privacy and promoting competition. International cooperation and coordination are needed in the early stages of CBDC design to avoid any unintended barriers at a later stage. Any system must be built with the flexibility to adapt both to a changing world and to different CBDC designs likely to be chosen by central banks.

Date of publication: 11/07/2022

BCBS: Interlinking payment systems and the role of application programming interfaces: a framework for cross-border payments

Status: Final

The CPMI has published a report setting out a framework for interlinking payment systems for cross-border payments and discussing the role of application programming interfaces (APIs). The CPMI states that there are numerous benefits to interlinking arrangements: enhancing cross-border payments by shortening transaction chains; supporting the harmonisation of data formats and facilitating data exchanges through the use of dedicated applications, as well as by reducing funding costs; limiting redundant compliance checks; and increasing competition in the provision of cross-border payment services. Depending on the design of the interlinked systems as well as the interlinking arrangement, cross-border settlement risk could also be reduced. Interlinking may face challenges and risks that need careful consideration and planning by operators and authorities considering such arrangements. Challenges include strategic and political factors, possible high start-up costs, divergent legal, regulatory and oversight frameworks, misaligned access criteria, differences in service level requirements, and operational risk management. These challenges and risks need to be carefully considered before establishing an interlinking arrangement and on an ongoing basis once the arrangement is in operation. This report provides a framework to help payment system operators and authorities understand and evaluate the benefits, challenges and risks of interlinking arrangements. It also provides an overview of important trends in interlinking arrangements and adoption of APIs by payment systems, drawing on recent CPMI surveys.

Date of publication: 08/07/2022

FSB: Report on options to improve adoption of the LEI, in particular for use in cross-border payments

Status: Final

The FSB has published a report exploring options to improve the adoption of the legal entity identifier (LEI), in particular for use in cross-border payments. The G20 roadmap to enhance cross-border payments has launched several initiatives to reduce friction in data processes, including by promoting the use of common message formats, data exchange protocols, conversion and mapping approaches from legacy formats and standardised data. To address data handling issues and improve compliance

processes, it is also examining the scope for a global unique identifier that links to account information in payment transactions. As part of this work, the FSB has been requested to explore options to improve the LEI's adoption. This report, which was produced in close coordination with the Global LEI Foundation (GLEIF), the LEI Regulatory Oversight Committee (ROC) and national authorities, sets out a series of recommendations for promoting the use of the LEI in cross-border payments and highlights the potential benefits of the LEI in supporting straight-through processing and assisting in KYC. The recommendations are addressed to FSB member jurisdictions, the FSB itself, ROC and GLEIF, relevant standard-setting bodies, and international organisations. Achieving these goals will depend on promoting uptake of the LEI among non-financial corporates as well as financial institutions. The FSB will review progress in implementing the recommendations and publish a progress report by end-2024, together with a review of progress in implementing the recommendations of the LEI peer review.

Date of publication: 07/07/2022

FSB: Interim report on developing the implementation approach for the cross-border payments targets

Status: Consultation

Deadline for the submission of comments: 31/07/2022

The FSB has published an interim report on the approach for monitoring progress towards meeting the targets for the G20 roadmap for enhancing cross-border payments. The report makes preliminary recommendations about key performance indicators (KPIs) that could be used to monitor progress over time and identifies existing and potential sources of data for calculating those KPIs. In October 2021, the FSB set quantitative global targets for addressing the four challenges faced by cross-border payments (cost, speed, access, transparency) as a key foundational step in the G20 roadmap. These targets were set for each of the three main segments of the market (wholesale, retail and remittances). However, measuring progress towards these targets will not be straightforward because no comprehensive data sources currently exist.

The FSB invites feedback on the preliminary proposals in this report, and, in particular, on the following questions: (i) has the FSB identified appropriate potential sources of data for efficiently monitoring progress towards the roadmap's targets? What, if any, additional or alternative public or private data sources should the FSB also consider, and for what KPIs?; (ii) has the FSB defined the KPIs appropriately, such that they are closely and meaningfully tied to the relevant target? What, if any, additional considerations should inform the calculation of the KPIs so that they provide sufficiently representative measurements of progress toward the targets without being overly burdensome?; and (iii) the FSB is evaluating the use of proxies for monitoring progress towards some of the targets. Are the proxies proposed appropriate? What, if any, additional or alternative proxies should the FSB consider that are sufficiently representative and simplify monitoring?

The responses will help to inform the FSB's report in October to the G20 and the public with further details of the implementation approach and the KPIs.

Date of publication: 06/07/2022

7. Banking union

7.1 Single Supervisory Mechanism (SSM)

(i) EU

ECB: Statement on the treatment of the European Banking Union in the assessment methodology for global systemically important banks

Status: Final

The ECB published a statement on the treatment of the European Banking Union (EBU) in the assessment methodology for global systemically important banks (G-SIBs). The ECB announces that in a targeted review, the BCBS has recognised the progress that had been made in the development of the EBU. The BCBS has agreed to give recognition in the G-SIB assessment framework to this progress through the existing methodology, which allows adjustments to be made according to supervisory judgement. Under this agreement, a parallel set of G-SIB scores will be calculated for EBU-headquartered G-SIBs and used to adjust their bucket allocations. These parallel scores recognise 66% of the score reduction that would result from treating intra-EBU exposures as domestic exposures under the G-SIB assessment methodology. Any downward adjustment of an EBU-headquartered G-SIB will be limited to a single bucket. This will not affect any bank's classification as a G-SIB, or the scores or bucket allocations of banks outside the EBU.

Date of publication: 27/06/2022

8. Institutional supervisory framework

(i) EU

ESMA: Re-prioritisation of 2022 deliverables

Status: Final

ESMA has published a letter sent to the Chair of the EC setting out which deliverables it has identified that can be deprioritised or postponed in order for it to deliver on its 2022 work programme; they include: (i) annual reports in relation to CSDR implementation, accepted market practices under MAR and supervisory measures and penalties under EMIR; (ii) two reports in relation to the EMIR Refit; (iii) a report on the efficiency of SFTR reporting and on SFTR fees; and (iv) the STS Peer Review. The specific reasons for the delay/deprioritisation of each of the deliverables are summarised in the annex and have been discussed with Commission staff in the relevant groups and committees.

Date of publication: 30/06/2022



9. Investment funds

9.1 Product regulation

(a) AIF

(i) Germany

BaFin: FAQ regarding the distribution and acquisition of investment funds pursuant to the KAGB (*FAQ zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB*)

Status: Final

BaFin has published an updated version of its FAQ regarding the distribution and acquisition of investment funds pursuant to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). In particular, this version is intended to reflect changes made by the German Fund Jurisdiction Act (*Fondsstandortgesetz* – FoStoG).

Date of publication: 05/07/2022

(ii) EU

ESMA: Q&A on the application of the AIFMD

Status: Final

ESMA has updated its Q&A on the application of the AIFMD by expanding it with three new questions: (i) section VI: Depositaries. New Q&A 15 and Q&A 16 on reconciliations; and (ii) section VIII: Delegation. New Q&A 4 on the responsibility for compliance with requirements for marketing communications.

Date of publication: 20/07/2022

ESMA: Report on penalties and measures imposed under the AIFMD in 2021

Status: Final

ESMA published its annual report on the penalties and measures imposed under the UCITS Directive for 2021. ESMA notes that broadly, the data gathered under the annual sanction reports published so far keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low. ESMA will continue to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Date of publication: 08/07/2022

(b) UCITS

(i) Germany

BaFin: Regulation amending the Regulation on the rules of conduct and organisational rules pursuant to the Investment Code (*Verordnung zur Änderung der Kapitalanlage-Verhaltens- und -Organisationsverordnung*)

Status: Final

BaFin has adopted the Regulation amending the Regulation on the rules of conduct and organisational rules (*Kapitalanlage-Verhaltens- und Organisationsverordnung* – KAVerOV) pursuant to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB).

The amendments aim to implement [Delegated Directive \(EU\) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS](#) with regard to the KAVerOV. Amendments to the KAVerOV will be limited to cases in which it does not refer to [Delegated Regulation \(EU\) No. 231/2013 \(AIFM Level 2 Delegated Regulation\)](#) or the provisions therein do not correspond to the amendments made by Delegated Directive (EU) 2021/1270. This Regulation amending the KAVerOV requires capital management companies of public investment funds to take sustainability risks into account in their proper business organisation and in their risk management by way of providing the necessary resources and expertise.

Date of publication: 29/07/2022

BaFin: FAQ regarding the distribution and acquisition of investment funds pursuant to the KAGB (FAQ zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB)

Status: Final

BaFin has published an updated version of its FAQ regarding the distribution and acquisition of investment funds pursuant to the German Investment Code (*Kapitalanlagegesetzbuch* – KAGB). For more information, please see section 9.1(a) above.

Date of publication: 05/07/2022

(ii) EU

ESMA: Q&A on the application of the UCITS Directive

Status: Final

ESMA has updated its Q&A on the application of the UCITS Directive by adding three new questions: (i) section X: Depository. New Q&A 7 on the reconciliation frequency for funds trading on a daily basis, and new Q&A 8 on reconciliations with tri-party collateral managers; and (ii) section XIII: Delegation. New Q&A 1 on the responsibility for ensuring compliance with the rules governing marketing communications.

Date of publication: 20/07/2022

ESMA: Report on penalties and measures imposed under the UCITS Directive in 2021

Status: Final

ESMA has published its annual report on the penalties and measures imposed under the AIFMD for 2021. ESMA notes that broadly, the data gathered under the annual sanction reports published so far keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low. ESMA will continue to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Date of publication: 08/07/2022

9.2 Prudential regulation

(a) Compliance

(i) EU

ESMA: Call for evidence on pre-hedging

Status: Consultation

Deadline for the submission of comments: 30/09/2022

ESMA has launched a consultation on a call for evidence with the aim of promoting discussion among stakeholders and gathering further evidence on the practice of pre-hedging that could help ESMA to develop appropriate guidance. The call for

evidence illustrates the arguments in favour and against such practice, and it requests contributions from stakeholders in order to properly delineate its admissibility in the context of MAR and MiFID/MiFIR.

The call for evidence seeks input in particular from investment firms, credit institutions, proprietary traders, market makers, asset management companies and any other market participants, including trade associations and industry bodies, institutional and retail investors, consultants, and academics that are involved with pre-hedging.

Date of publication: 29/07/2022

ECON: Report on proposed amendments to ELTIF Regulation

Status: Draft

The European Parliament's Economic and Monetary Affairs Committee (ECON) published its report (dated 28 June) on the proposal for a Regulation amending the Regulation on European long-term investment funds (ELTIFs). ECON voted to adopt the report in June. The Council of the EU adopted its negotiation position in May.

Date of publication: 01/07/2022



10. Special topics

10.1 FinTech/Digital finance

(i) Germany

BaFin: Note on the progress in the triologue negotiations regarding MiCA and DORA (*Notiz zu Fortschritten bei den Trilogverhandlungen um MiCA und DORA*)

Status: Final

BaFin has published a note welcoming the provisional agreements reached in the triologue negotiations regarding the Regulation on Markets in Crypto Assets (MiCA) and the Digital Operational Resilience Act (DORA) throughout the last two months.

Date of publication: 20/07/2022

(ii) EU

EP: Provisional Agreement resulting from inter-institutional negotiations on DORA

Status: Draft

The EP has published the text of the provisional inter-institutional agreement that has been reached in triologue negotiations for the proposed Regulation on digital operational resilience for the financial sector (DORA). ECON approved the text on 12 July. The EP and the Council will now need to formally adopt the proposal. The EP's procedure files indicate that it expects to consider the proposal during its plenary session on 9-10 November.

Date of publication: 28/07/2022

EP: Provisional Agreement resulting from inter-institutional negotiations on the Amending Directive

Status: Draft

The EP has published the text of the provisional inter-institutional agreement that has been reached in triologue negotiations for the proposed Amending Directive, related to the Regulation on digital operational resilience for the financial sector (DORA). ECON approved the text on 12 July. The EP and the Council will now need to formally adopt the proposal. The EP's procedure files indicate that it expects to consider the proposal during its plenary session on 9-10 November.

Date of publication: 28/07/2022

EC: Adoption of 13 Delegated and Implementing Regulations under Crowdfunding Regulation

Status: Adopted by the EC

The EC has adopted the following Delegated Regulations supplementing the Crowdfunding Regulation with regard to RTS: (i) on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds, in accordance with Article 6; (ii) specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider, under Article 12; (iii) specifying conflicts of interest requirements for crowdfunding service providers, produced under Article 8(7); (iv) specifying the methodology for calculating default rates of loans offered on a crowdfunding platform, produced under Article 20(3); (v) specifying the measures and procedures for crowdfunding service providers' business continuity plan, produced under Article 12(16); (vi) for the key investment information sheet together with an Annex, produced under Article 23(16); (vii) specifying the requirements, standard formats and procedures for complaint handling, together with an Annex, produced under Article 7(5); (viii) specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects, together with an Annex, produced under Article 28(5) of the ECSPR; and (ix) for the exchange of information between competent authorities in

relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business, produced under Article 31(8).

The EC also adopted four Implementing Regulations laying down ITS for the application of the Crowdfunding Regulation with regard to: (a) data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms, together with an Annex, produced under Article 16(3); (b) standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business, together with an Annex, produced under Article 31(9); (c) the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA, together with an Annex, produced under Article 28(5); and (d) standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business, together with an Annex, produced under Article 32(4). All of the Regulations will come into force on the 20th day following their publication in the OJ. The Council and the EP will now scrutinise the Delegated Regulations.

- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying conflicts of interest requirements for crowdfunding service providers
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the methodology for calculating default rates of loans offered on a crowdfunding platform
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the measures and procedures for crowdfunding service providers' business continuity plan
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS for the key investment information sheet
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the requirements, standard formats and procedures for complaint handling
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects
- Commission Delegated Regulation (EU) .../... supplementing the Crowdfunding Regulation with regard to RTS for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business
- Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms
- Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business
- Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA
- Commission Implementing Regulation (EU) .../... laying down ITS for the application of the Crowdfunding Regulation with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business

Date of publication: 13/07/2022

ECB: Speech on digital technology and fighting financial crime

Status: Final

The ECB has published a speech by Elizabeth McCaul, Supervisory Board Member on digital technology and financial crime. Ms McCaul emphasises that technology is neither a panacea nor a poison, but a tool that can serve multiple purposes. For more information, please see section 5 above.

Date of publication: 13/07/2022

EC: Adoption of Delegated Regulation extending transitional period for crowdfunding services under national law

Status: Adopted by the EC

Date of application: 11/11/2022

The EC has adopted a Delegated Regulation extending the transitional period for continuing to provide crowdfunding services in accordance with national law as referred to in Article 48(1) of the Crowdfunding Regulation. The EC proposes to extend the transitional period for crowdfunding services provided in accordance with national law (i.e. authorised before 10 November 2021), by one year until 10 November 2023. The Crowdfunding Regulation does not allow further extensions after 10 November 2023, and crowdfunding service providers that have not received authorisation by this date will have to put operations on hold until such authorisation is granted.

The proposed Regulation shall enter into force the day following its publication in the OJ. The Council and the EP will now scrutinise the Delegated Regulation.

Date of publication: 12/07/2022

ESMA: Consultation on Guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure

Status: Final

Deadline for the submission of comments: 09/09/2022

ESMA began consulting on Guidelines to establish standard forms, formats and templates to apply for permission to operate a DLT market infrastructure under the Regulation on a pilot regime for market infrastructures based on DLT (DLTR). Under the DLTR, market infrastructures can request limited exemptions from specific requirements in MiFID II and CSDR, provided they comply with the conditions attached to those exemptions and compensatory measures requested by the relevant NCA. The Guidelines set out the minimum instructions that NCAs should provide to market participants and how applicants should provide the requested information.

ESMA intends to finalise the Guidelines ahead of the application date of the DLTR on 23 March 2023.

Date of publication: 11/07/2022

ECB: A deep dive into crypto financial risks: stablecoins, DeFi and climate transition risk

Status: Final

The ECB has published a new issue of the Macroeprudential Bulletin, taking a deep dive into the risks and policy implications of several segments of the crypto-asset market. It sets out that the Financial stability risks stemming from crypto-assets are rising, and the crypto-asset ecosystem has become more complex and interconnected. One central element is stablecoins, whose growth, innovation and increasing global use cases call for the urgent implementation of appropriate regulatory, supervisory and oversight frameworks before significant further interconnectedness with the traditional financial system occurs. Another fast-growing segment within the crypto ecosystem is decentralised finance (DeFi), whose novel way of providing financial services without relying on centralised intermediaries entails specific financial stability risks and regulatory challenges. Lastly, this issue highlights the climate transition risk for the financial sector stemming from the significant carbon footprint of certain crypto-assets like bitcoin and proposes potential measures that can be taken by authorities.

Date of publication: 11/07/2022

ESAs: Mandate on digital operational resilience

Status: Final

Date of application: 01/07/2022

The ESAs have published the mandate for the sub-committee on digital operational resilience. The Committee's primary objective is to assist the ESAs in fulfilling their policy mandates under DORA. The Committee shall: (i) contribute to, and coordinate where needed, the ESAs' input on any aspects of the EU regulatory process relating to digital operational resilience, including developing technical advice, draft technical standards, Guidelines and recommendations where mandated by the EC or by legislation, in particular by DORA; (ii) conduct preparatory work for the gradual development of an effective Union-level coordinated response in the event of a cross-border major cyber incident or related threat that could have a systemic impact on the Union's financial sector, as envisaged by the ESRB's December 2021 recommendation on a pan-European systemic cyber incident coordination framework for relevant authorities; and (iii) coordinate the monitoring of digital operational resilience practices and threats, ensure cross-sectoral coordination and exchange of information with a view to promoting the safety and soundness of markets and convergence of regulatory and supervisory practice.

Date of publication: 08/07/2022

(iii) International

FATF: Report on data protection, technology and private sector information sharing

Status: Final

The FATF has published a report on the fight against financial crime, with a focus on data protection, technology and private sector information sharing. For more information, please see section 5(iii) above.

Date of publication: 20/07/2022

FSB: Letter to G20 on Covid-19 exit strategies, cryptoassets and the climate roadmap

Status: Final

The FSB has published a letter sent to G20 finance leaders and central bank governors providing an update on a number of areas of its recent work ahead of their 15-16 July summit, including: (i) exit strategies and addressing scarring effects from Covid-19 – recent economic and financial developments have made it more challenging for policy makers to support a strong, equitable and inclusive recovery from Covid-19. Policies to contain economic scarring from the pandemic will therefore be an important contributor to financial resilience and sustainable economic growth. Exit strategies need to reflect specific domestic economic conditions and avoid excessive financial market reactions, which may limit the scope to engineer a fully synchronised exit across jurisdictions. The FSB will deliver a final report on exit strategies in November; (ii) cryptoassets – recent turmoil highlights the importance of advancing the ongoing work to address the risks posed by cryptoassets. This turmoil brings into sharp focus their intrinsic volatility, structural vulnerabilities and the issue of their increasing interconnectedness with the traditional financial system. The FSB will deliver a consultative report on its review of the FSB High-Level Recommendations for 'global stablecoins' and a consultative report with recommendations on regulatory and supervisory approaches to other crypto-assets in October; (iii) the FSB's climate roadmap – the FSB will publish: (a) its joint work with the NGFS on climate scenarios in November; (b) the final version of its report on supervisory and regulatory approaches to climate change in October; and (c) a report on the progress by the ISSB in developing the global minimum baseline disclosures standards as well as by individual jurisdictions and firms in improving climate disclosures, in October.

Date of publication: 13/07/2022

FSB: Statement on international regulation and supervision of cryptoasset activities

Status: Final

The FSB has issued a statement on international regulation and supervision of cryptoasset activities. Highlights include: (i) cryptoassets, including stablecoins, are fast-evolving – the recent turmoil in cryptoasset markets highlights their intrinsic volatility, structural vulnerabilities and the issue of their increasing interconnectedness with the traditional financial system. An effective regulatory framework must ensure that cryptoasset activities posing risks similar to traditional financial activities are subject to the same regulatory outcomes, while taking account of novel features of cryptoassets and harnessing potential benefits

of the technology behind them; (ii) cryptoassets and markets must be subject to effective regulation and oversight, commensurate to the risks they pose, both at the domestic and international level; (iii) stablecoins should be captured by robust regulations and supervision by relevant authorities if they are to be adopted as a widely used means of payment or otherwise play an important role in the financial system; and (iv) the FSB will report to the G20 in October on regulatory and supervisory approaches to stablecoins and other cryptoassets.

The FSB will submit public consultation reports on: (a) the review of its high-level recommendations for the regulation, supervision and oversight of “global stablecoin” arrangements, including how existing frameworks may be extended to close gaps and implement the high-level recommendations; and (b) recommendations for promoting international consistency of regulatory and supervisory approaches to other cryptoassets and cryptoasset markets and strengthening international cooperation and coordination.

Date of publication: 11/07/2022

IOSCO: Application of the principles for financial market infrastructures to stablecoin arrangements

Status: Final

The CPMI and IOSCO have finalised their Guidance on the application of the Principles for Financial Market Infrastructures (PFMI) to systemically important stablecoin arrangements (SAs), including the entities integral to such arrangements. The guidance highlights that the transfer function of an SA is comparable to the transfer function performed by other types of FMI. As a result, an SA that performs this transfer function is considered an FMI for the purpose of applying the PFMI and, if determined by relevant authorities to be systemically important, the SA as a whole would be expected to observe all relevant principles in the PFMI. SAs may present some notable and novel features as compared with existing FMIs. These notable features relate to: (i) the potential use of settlement assets that are neither central bank money nor commercial bank money and carry additional financial risk; (ii) the interdependencies between multiple SA functions; (iii) the degree of decentralisation of operations and/or governance; and (iv) a potentially large-scale deployment of emerging technologies such as DLT. Given these features, the guidance elaborates aspects related to: governance, framework for the comprehensive management of risks, settlement finality and money settlements. The guidance also provides considerations to assist authorities in determining whether a stablecoin arrangement is systemically important. The guidance emphasises that in order to address these broader challenges in a holistic manner, the regulation, supervision and oversight of stablecoin arrangements alone may not be sufficient and will need to be complemented by other private or public sector efforts such as improvements in existing payment infrastructures and exploration or development of central bank digital currency. There is also a need for global cooperation.

Date of publication: 11/07/2022

IOSCO: Cryptoasset Roadmap for 2022-2023

Status: Final

The International Organization of Securities Commissions (IOSCO) has published its cryptoasset roadmap for 2022-2023. The roadmap sets out its regulatory policy agenda and work programme for the sector over the next 12 to 24 months, which will be overseen and taken forward by its Fintech Taskforce (FTF). The FTF, established in March, is tasked with developing, overseeing, delivering, and implementing IOSCO’s regulatory agenda with respect to Fintech and cryptoassets, and coordinating IOSCO’s engagement with the FSB and other standard-setting bodies on Fintech and crypto-related matters. This work will be initially divided into two workstreams: the first, covering Crypto and Digital Assets (CDA) will be led by the FCA, while the second covers Decentralised Finance (DeFi) and will be led by the US Securities and Exchange Commission. Both workstreams will primarily focus on analysing and responding to market integrity and investor protection concerns within the cryptoasset space. The FTF will nonetheless ensure that the two workstreams are connected and adopt a coherent and coordinated cross-sectoral approach in developing policy in response to crystallised and emerging risks across the sector. The key elements and deliverables for each of the workstreams are summarised in the workplan: (i) the CDA workstream will primarily focus on issues relating to market integrity and investor protection. This will entail looking closely at fair, orderly trading, transparent markets, suitability and market manipulation (Part 1), and safekeeping, custody and soundness (Part 2); and (ii) the DeFi workstream will examine how IOSCO principles and standards could apply to common activities, products, and services in DeFi (Part 1). The DeFi workstream will also continue to explore and highlight the links between DeFi, stablecoins, and cryptoasset trading, lending and borrowing platforms, as well as the interactions of DeFi with broader financial markets (Part 2). Both workstreams are aiming to publish a report with policy recommendations by the end of 2023. The FTF will explore suitable junctures in 2023 where interim reports could be published to keep markets apprised of its ongoing work.

Date of publication: 07/07/2022

10.2 Sustainable finance

(i) EU

EBA: Responses to public consultations on sustainability-related disclosure standards launched by the ISSB and the EFRAG

Status: Final

The EBA has published two responses to public consultations on sustainability-related disclosure standards launched by the International Sustainability Standards Board (ISSB) and the European Financial Reporting Advisory Group (EFRAG). It welcomes both consultations and agrees with the need to introduce international and European standards in response to the growing demand for relevant, reliable and comparable corporate data on sustainability-related matters, and the need for a close cooperation between the ISSB and EFRAG during the finalisation of their own consultations, so as to ensure consistency. The EBA also aims at ensuring consistency between the requirements applicable to institutions under the EFRAG framework and under the Pillar 3 framework.

- Letter on EBA comments to the ISSB consultation
- Letter on EBA comments to the EFRAG consultation
- EBA responses to EFRAG consultations

Date of publication: 29/07/2022

ECB: Response to public consultation on sustainability-related disclosure standards launched by the EFRAG

Status: Final

The ECB has published its response to the public consultation on sustainability-related disclosure standards launched by the European Financial Reporting Advisory Group (EFRAG). Therein, it expressed its strong support for the CSRD and generally for EU efforts to improve sustainability disclosure. The ECB also welcomed the progress made by EFRAG regarding the development of EU sustainability reporting standards (ESRS) and the EFRAG's good quality drafts.

Date of publication: 29/07/2022

ESAs: Joint report on the extent of voluntary disclosure of principal adverse impact under the SFDR

Status: Final

The ESAs have published the first annual report on the extent of voluntary disclosure of principal adverse impact under Article 18 of the SFDR. Based on a survey of NCAs, the ESAs have developed a preliminary, indicative and non-exhaustive overview of good examples of best practice, and less good examples of voluntary disclosure. The report's findings include: (i) the extent of compliance with voluntary disclosure varies significantly across respondents, but, overall, the first disclosures since the application of the SFDR are not very detailed – this is expected to change for the disclosures made for the 2022 reporting period once the SFDR Delegated Regulation applies; (ii) there is an overall low level of disclosure on the degree of alignment with the objective of the Paris Agreement – when disclosure of alignment is made, it is often vague; and (iii) there is a low level of compliance with the details required for explaining why financial market participants do not take into account the adverse impact of their investment decisions.

The report also includes a set of recommendations for NCAs to ensure appropriate supervision of financial market participants' practices, such as running regular surveys in their own market to determine whether supervisory entities comply with Article 4 SFDR disclosures. The ESAs note that future reports will: (a) offer meaningful guidance more generally once the SFDR Delegated Regulation has come into effect; and (b) cover voluntary disclosure under Article 7(1), which will be fully applicable only from 30 December.

Date of publication: 28/07/2022

ECB/ESRB: Report on the macroprudential challenge of climate change

Status: Final

The ECB and ESRB have published a joint report on how climate shocks can affect the European financial system. The findings show that climate risks can quickly spread throughout the financial system and harm companies and banks alike. This could notably be the case in the event of a disorderly green transition. Furthermore, financial market losses from abruptly repricing climate risks could affect investment funds and insurers as well as trigger corporate defaults and credit losses for banks. In light of these findings, the authors urge decision-makers to ensure that macroprudential and microprudential policies will work in tandem in order to mitigate systemic risk.

Date of publication: 26/07/2022

Commission Delegated Regulation (EU) 2022/1288 supplementing the SFDR with regard to RTS specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports

Status: Published in the OJ

Date of entry into force: 14/08/2022

Date of application: 01/01/2023

The Commission Delegated Regulation (EU) 2022/1288 supplementing the SFDR with regard to RTS specifying: (i) the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’; (ii) the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impact; and (iii) the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports, has been published in the OJ. The agreement on this new Delegated Regulation has previously been [welcomed by BaFin](#).

Date of publication: 25/07/2022

Commission Delegated Regulation (EU) 2022/1214 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities

Status: Published in the OJ

Date of entry into force: 04/08/2022

Date of application: 01/01/2023

The Commission Delegated Regulation (EU) 2022/1214 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosure for those economic activities has been published in the OJ. The Delegated Regulation sets out the conditions under which nuclear and natural gas energy activities can be included in the list of economic activities covered by the EU Taxonomy Regulation. It also amends Commission Delegated Regulation (EU) 2021/2178 to require large listed non-financial undertakings and financial undertakings to disclose the amount and proportion of their activities linked to natural gas and nuclear energy.

Date of publication: 15/07/2022

Platform on Sustainable Finance: Draft report on minimum safeguards

Status: Consultation

Deadline for the submission of comments: 22/08/2022

The EU Platform on Sustainable Finance has invited feedback on its draft report on minimum safeguards (MS) under the Taxonomy Regulation Articles 3 and 18. The report identifies four core topics for which compliance with minimum safeguards should be defined: human rights, including workers’ rights; bribery/corruption; taxation; and fair competition. As regulation of human rights due diligence and sustainability reporting is not yet finalised, the Platform notes that there remains some

uncertainty surrounding their implementation. The report therefore: (i) builds the requirements for MS compliance on the international standards referenced in Article 18 – especially on the six steps of the UNGPs/OECD Guidelines; (ii) points to upcoming regulations and disclosure requirements that build on these standards; (iii) provides independent sources of information on particular aspects of their implementation for external performance checks; and (iv) illustrates potential non-compliance with minimum safeguards, with the help of examples. Specifically, the report recommends that firms consider as a sign of non-compliance with MS: (a) inadequate or non-existent corporate due diligence processes on human rights, including labour rights, bribery, taxation, and fair competition; (b) final conviction of companies in court in respect of any of these topics; (c) a lack of collaboration with a National Contact Point (NCP) and an assessment of non-compliance with OECD Guidelines by an OECD NCP; and (d) non-response to allegations by the Business and Human Rights Resource Centre. The report also gives advice on project finance, SME financing, and green bonds, and advises how to assess sub-sovereign compliance with MS.

The Platform intends to prepare the final report in Q3 2022 to be submitted to the EC.

Date of publication: 11/07/2022

ECB: Results of the 2022 climate supervisory stress test

Status: Final

The ECB has published the results of its 2022 climate risk stress test, which found that banks in the Banking Union do not yet sufficiently incorporate climate risk into their stress-testing frameworks and internal models, despite some progress made since 2020. Findings include: (i) around 60% of banks do not yet have a climate risk stress-testing framework. Banks currently fall short of best practice, according to which they should establish climate stress-testing capabilities that include several climate risk transmission channels (e.g. market and credit risks) and portfolios (e.g. corporate and mortgage); (ii) almost two-thirds of banks' income from non-financial corporate customers stems from greenhouse gas-intensive industries. In many cases, banks' "financed emissions" come from a small number of large counterparties, which increases their exposure to transition risks. Banks often rely on proxies to estimate their exposure to emission-intensive sectors and need to step up their customer engagement to obtain more accurate data and insights into their clients' transition plans; (iii) physical risk has a heterogeneous impact across EU banks. Banks' vulnerability to a drought and heat scenario is highly dependent on sectoral activities and the geographical location of their exposures. The impact of this risk materialises through a decrease in sectoral productivity, e.g. in agriculture and construction activities, and an increase in loan losses in the affected areas. Similarly, in the flood risk scenario, real estate collateral and underlying mortgages and corporate loans are expected to suffer, particularly in the most affected locations. The results show that an orderly green transition translates into lower losses than disorderly or no policy action. However, banks barely differentiate between various long-term scenarios, as they lack robust strategies, other than the tendency to reduce exposures from the most polluting sectors and to support lower-carbon-emitting businesses. Banks must consider direct and indirect transmission channels in their strategic long-term plans. The results will feed into the Supervisory Review and Evaluation Process from a qualitative point of view, but there will be no direct impact on capital through the Pillar 2 guidance this year.

All participating banks have received individual feedback and are expected to take action accordingly, in line with the set of best practices that the ECB will publish in Q4.

Date of publication: 08/07/2022

EP: MEPs do not object to inclusion of gas and nuclear activities within the Taxonomy Delegated Act

Status: Draft

The EP has rejected a motion to oppose the inclusion of nuclear and gas as environmentally sustainable economic activities. In a press release, the EP announced that it did not object to the EC's Taxonomy Delegated Act to include specific nuclear and gas energy activities, under certain conditions, in the list of environmentally sustainable economic activities covered by the EU Taxonomy. As the EC believes there is a role for private investment in gas and nuclear activities in the green transition, it has proposed the classification of certain fossil gas and nuclear energy activities as transitional activities contributing to climate change mitigation. The inclusion of certain gas and nuclear activities is time-limited and dependent on specific conditions and transparency requirements. According to the press release, 278 MEPs voted in favour of the resolution, 328 against and 33 abstained. An absolute majority of 353 MEPs was needed for the EP to veto the EC's proposal.

If neither the EC, nor the Council of the EU object to the proposal by 11 July, the Taxonomy Delegated Act will enter into force and apply as of 1 January 2023.

Date of publication: 06/07/2022

EC: Request for input from ESAs on greenwashing risks and supervision of sustainable finance policies

Status: Final

The EC published a request for input to the ESAs relating to greenwashing risks and the supervision of sustainable finance policies. The ESAs are requested to provide: (i) input on the occurrence of greenwashing and potential for greenwashing risks as well as an overview and assessment of supervisory practices, experience, convergence and supervisory capacities related to the prevention of greenwashing through available tools and powers at the time of this request. This should include whether existing tools and data are sufficient to adequately monitor and address greenwashing; (ii) a common high-level understanding of the key features of greenwashing complemented with more specific sectorial definitions where relevant and necessary; and (iii) early insight on whether current legal definitions aimed at addressing greenwashing are understood consistently by supervisors and market participants.

The EC requests that the ESAs publish progress reports in 12 months and final reports in 24 months.

Date of publication: 30/06/2022

(ii) International

IOSCO: Welcoming strong stakeholder engagement on proposals for a comprehensive global baseline of sustainability disclosures for capital markets

Status: Final

IOSCO has published a statement welcoming strong stakeholder engagement on proposals for a comprehensive global baseline of sustainability disclosures for capital markets in the context of its recent Board meeting. In particular, the Board discussion focused on: (i) ensuring the proposed standards can truly serve as an effective global baseline under either a voluntary or mandatory regime, including by considering how to provide for the scaling and phasing-in of requirements to accommodate issuers with differing degrees of maturity in sustainability reporting; (ii) how the ISSB can best assist implementation by clarifying definitions and providing additional guidance and examples where necessary; and (iii) how and when to incorporate the proposed industry-based disclosure data points, recognising on the one hand that industry-specificity is highly valued by investors, while on the other that some data points may initially be challenging for some issuers.

Date of publication: 27/07/2022

FSB: Roadmap addressing financial risks from climate change

Status: Final

The FSB has published its first annual progress report on its Roadmap for addressing climate-related financial risks. The report takes stock of progress by standard-setting bodies and other international organisations on the actions coordinated through the Roadmap, outlines areas for further attention, and provides updates where needed to the detailed Roadmap actions. The FSB highlights that progress has been made across all four blocks of the Roadmap: (i) firm-level disclosures – a milestone has been the publication by the newly established International Sustainability Standards Board (ISSB) of two Exposure Drafts, on climate and general sustainability-related disclosure standards. There is also a growing recognition of the importance of global assurance standards to drive reliability of disclosures; (ii) data – a priority is to further coordinate the establishment of common metrics for financial risks, including forward-looking metrics. It is also important to establish data repositories that provide open access to data in a consistent form; (iii) vulnerabilities analysis – monitoring has continued using the tools currently available and there has been further development of conceptual frameworks and scenario analysis; and (iv) regulatory and supervisory practices and tools – completed initiatives include supervisory risk management expectations and supervisory guidance covering the banking, insurance and asset management sectors. Financial authorities should continue to embed the supervision of climate-related risks into overall supervisory frameworks, including the further development of the use of climate scenario analysis and stress-testing exercises.

Date of publication: 14/07/2022

NGFS: Final report on bridging data gaps

Status: Final

The Network for Greening the Financial System (NGFS) has published its final report on bridging climate-related data gaps. This final report provides specific NGFS policy recommendations for improving the availability, quality, and comparability of climate-related data. In identifying the main climate-related data gaps, this report provides concrete policy recommendations that policymakers and other stakeholders can adopt to address climate-related data challenges, and highlights in particular areas where the directory can prove useful in meeting these challenges.

Recommendations include: (i) fostering convergence towards a common and consistent set of global disclosure standards. The NGFS explains the need to substantially increase the availability of decision-useful granular data on emissions, and to improve the reliability of reported climate-related data; (ii) increasing efforts towards mutually shared and operationalised principles for taxonomies and sustainable finance classifications. The NGFS calls for the harmonisation of taxonomies and sustainable finance classifications across the globe and to foster interoperability. The availability of comparable and consistent data can help to achieve this objective; (iii) developing well-defined and decision-useful metrics, and methodological standards. The NGFS calls for a substantial increase in the harmonisation of forward-looking metrics; and (iv) better leveraging available data sources, approaches and tools. The NGFS explains that many existing data sources, approaches, and tools have already improved data availability. Knowledge-sharing and capacity-building are key to enhancing their use and development.

Despite recent progress, the NGFS believes there is an urgent need for further action on the climate-related data front, and this is why the NGFS work programme for 2022-2024 provides for the workstream on bridging the data gaps to evolve into an internal data experts' network, after publication of this final report.

Date of publication: 06/07/2022

ICMA: The Principles announce key publications and resources in support of market transparency and development

Status: Final

ICMA announced that the Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles, a collection of voluntary frameworks with the stated mission and vision of promoting the role that global debt capital markets can play in financing progress towards environmental and social sustainability, have published: (i) new definitions for green securitisation (Secured Green Collateral Bond, Secured Green Standard Bond) clarifying terminology and market practice, notably for collateral. A related Q&A has also been released; (ii) an updated registry of approximately 300 key performance indicators (KPIs) for Sustainability-Linked Bonds. An accompanying Q&A also addresses, among other issues, the materiality assessment of KPIs; (iii) a new Climate Transition Finance Methodologies registry with a list of tools to specifically help issuers, investors, or financial intermediaries validate their emission reduction trajectories/pathways as “science-based”; (iv) updated Guidelines for External Reviews, to facilitate the assessment of alignment with the existing Climate Transition Finance Handbook; (v) updated high-level mapping to the UN’s Sustainable Development Goals; (vi) a recommendations paper and proposed information template for providers of Green, Social and Sustainability Bond index services; (vii) a pre-issuance checklist for Green Bonds/Green Bond Programmes and an updated Sustainable Bond/Bond Programme Information Template; and (viii) new metrics for impact reporting: (a) for Green Projects relating to environmentally sustainable management of living natural resources and land use; and (b) for Social Projects (including an enriched list of social indicators and impact confirmation on target population).

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